



County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**

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Chief Administrative Officer

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Third District

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MICHAEL D. ANTONOVICH  
Fifth District

February 13, 2007

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**RECOMMENDATION TO APPROVE A SOLE SOURCE CONTRACT  
WITH GENSOURCE, A DIVISION OF STRATACARE CORPORATION,  
FOR A WORKERS' COMPENSATION CLAIM ADMINISTRATION SYSTEM  
(ALL DISTRICTS – 3 VOTES)**

**CHIEF INFORMATION OFFICER RECOMMENDATION:**

**APPROVE ( X )    APPROVE WITH MODIFICATIONS (   )    DISAPPROVE (   )**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chairman to execute the attached sole source Contract with GenSource, A Division of StrataCare Inc., (GenSource), for application hosting and professional services to support the workers' compensation claim administration and information system (System). This Contract will be effective for a three (3) year term, commencing March 1, 2007, with a maximum contract sum not to exceed \$1,544,500, and includes an option to extend maintenance services for up to two (2) additional one (1) year terms, at a total cost of \$927,000, subject to adjustment in electronic data transfer costs which may be incurred to comply with State of California workers' compensation reporting requirements.
2. Delegate authority to the County of Los Angeles (County) Chief Administrative Officer (CAO), or his designee, to approve and execute extensions and change notices, and purchase additional user software licenses, pursuant to the provisions of the Contract.

3. Delegate authority to the CAO to execute the software escrow agreement pursuant to the provisions of the Contract.
4. Instruct the Auditor-Controller to make payments for System costs, as invoiced and validated by the CAO.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Approval of this recommendation will ensure uninterrupted availability of this critical System. Workers' compensation claim administration and information system software licenses and system maintenance services have been provided by GenSource since 1985. Nearly 300 users, including the County's workers' compensation third party claim administration firms (TPAs), CAO, County Counsel, and other County staff depend upon the System applications to manage the County's workers' compensation claim administration program, process indemnity payments to injured workers, and issue medical payments to healthcare and other service providers.

Presently, GenSource software licenses and software maintenance are obtained through purchase orders processed under the authority of the Internal Services Department (ISD). Future System costs for hosting, maintenance, and support services will exceed ISD's purchasing authority, thereby prohibiting the CAO from securing the desired services through the purchase order process. We are therefore requesting your Board's approval of this Contract to ensure these crucial System functions continue without interruption.

Approval of this Contract will also enable the County to implement a major upgrade of the System software, as well as enhance the technical architecture and system environment to a network-based model, to enable the County to fully utilize the latest System capabilities. These capabilities include enhanced workers' compensation claim administration and management tools, expanded reporting capabilities, and improved communication of claim information between TPAs and client County departments.

#### **Implementation of Strategic Plan Goals**

The recommended actions are consistent with the County's Strategic Plan Goal Three, Organizational Effectiveness, by ensuring that service delivery systems are efficient, effective, and goal oriented; and Goal Four, Fiscal Responsibility, by strengthening the County's fiscal capabilities by providing critical data for financial decision making. The Contract and System are also in accordance with the CAO Business Automation Plan (BAP), as it meets the CAO's long-term strategies to upgrade mission-critical applications.

### **FISCAL IMPACT/FINANCING**

These services will be provided for the initial three (3) year term at a cost of \$1,544,500, itemized as follows:

- A one-time charge of \$154,000 for the first year start-up, migration and implementation of the upgrade from the current GenSource Legacy System utilized by the County to the latest System application, GenComp for Windows (GCFW), which includes the perpetual GCFW software license;
- A maximum \$720,000 (\$240,000 per year) for System maintenance and support, including software upgrades to support 300 users;
- A maximum \$310,500 (\$103,500 per year) for State of California-mandated electronic transfer (ET) of workers' compensation claim data from the System to the California Department of Industrial Relations (DIR). The Contract assigns responsibility to GenSource for ensuring that information collected by the County's TPAs is transferred to DIR. DIR utilizes this data to assist in its oversight of the California workers' compensation system, and obtain statistical information for research purposes;
- A maximum \$60,000 (\$20,000 per year) for user training, as may be required by the County; and
- A maximum \$300,000 (\$100,000 per year) in funding for customization costs, should changes in System programming be necessary to address unanticipated County service needs, such as DIR-mandated changes in reporting requirements, increased maintenance and support service costs, should the number of County System users exceed 300, and for software escrow fees.

If the County elects to extend the GenSource contract for System maintenance services through years four and five, the costs will be:

- A maximum \$240,000 per year for maintenance and support, including software upgrades to support 300 users;
- A charge of not less than \$103,500 per year for ET of workers' compensation claim data from the System to the State. This ET cost may increase should new vendor programming be required to comply with changes in reporting and/or electronic billing requirements as mandated by the State;
- A maximum \$20,000 per year to pay for user training, as may be required by the County; and

- A maximum \$100,000 per year for customization costs, should changes in System programming be necessary to address unanticipated County service needs, such as DIR-mandated changes in reporting requirements, increased maintenance and support service costs, should the number of County System users exceed 300, and for software escrow fees.

Funding is available in the Workers' Compensation Trust Fund to pay for these costs.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

GenSource is a recognized leader in the workers' compensation information system industry, and provides services to many large public and private sector clients, including the State of California, County of San Bernardino, the Walt Disney Company, and Blue Cross of California. They have extensive knowledge of the County's workers' compensation program, and have accommodated previous County requests for software modifications and upgrades at minimal expense, or at no additional cost to County by incorporating them within their base application releases. GenSource's successful processing of millions of transactions over the past 20 years has demonstrated their ability to deliver consistent and reliable performance.

Approval of this Contract will enable County TPAs to upgrade to the latest GCFW software release. The Contract also provides for GenSource to host the County's data on its database and application servers. County data are presently hosted on servers maintained by ISD; however, GenSource can provide hosting services at a substantially lower cost. GenSource hosting will also enable the County to receive a data warehouse with related maintenance at no additional cost, as well as automatic global System updates, eliminating the County administrative cost associated with loading of such software releases onto the County servers and individual user computers.

The GenSource database server is exclusively dedicated to the County's data only, and is located in a secure area of GenSource's internal network. The Chief Information Officer (CIO) concurs that these security measures are appropriate. The Contract also requires that GenSource place the GCFW System source code in an escrow account to ensure the County's access, should circumstances arise that would prevent GenSource from continuing to provide the System maintenance services.

The attached Contract was approved as to form by County Counsel, and reviewed by the CIO; they concur with these recommendations. This is not a "Proposition A" contract, and, therefore, not subject to the Living Wage Program (*Los Angeles County Code Chapter 2.201*).

## **CONTRACTING PROCESS**

On February 23, 2006, we notified your Board of our intent to negotiate a sole source Contract with GenSource. Because the System software is proprietary to GenSource, neither the County's liability Risk Management Information System (RMIS) vendor, nor any other alternative vendor, can provide the necessary product maintenance; therefore, a sole source Contract is needed.

In addition to ensuring the State-mandated workers' compensation claim services continue, the Contract will also provide the County with the time needed to assess System-user needs to determine if future changes in the System and/or vendor are desirable, and if a competitive solicitation process should be initiated. This assessment will include evaluation of the feasibility of consolidating these System functions with those of RMIS.

The following are areas within the negotiated Contract that depart from the County's standard terms and conditions. The CAO believes these negotiated changes are commercially reasonable and do not pose undue risk or burden to the County. County Counsel and CIO have reviewed these issues and concur with these changes:

Assignment and Delegation - The Contract includes this provision requiring that GenSource obtain the County's written consent to an assignment. GenSource has insisted upon including an exception that a merger or the sale of all, or substantially all of, GenSource's assets shall not constitute an assignment, but rather be considered a permitted transfer. However, GenSource is obligated to require that any successor Contractor shall be explicitly bound by the terms and conditions of this Contract.

Indemnification - A statement has been added to the County's standard Indemnification provision specifying that GenSource shall not be obligated to indemnify the County for liability arising from the County's sole negligence due to its acts or omissions relating to this Contract.

Limited Warranty/Disclaimer and Limitation of Liability - The negotiated Contract limits GenSource's liability for damages sustained by County, and County's exclusive remedy in such an event, to the refund of all license fees paid to date, or the sum of \$20,000, whichever amount is greater, should the System fail to meet the specifications. GenSource will not be liable for any incidental, indirect, special, or consequential damages that may result from the use or inability to use the System. However, GenSource remains obligated to indemnify any third parties seeking damages, and to assume any loss which would be claimable under the commercial insurance policies, which GenSource is required to maintain pursuant to the Contract.

Most Favoured Public Entity - GenSource would not agree to this provision.

Termination for Convenience - The standard provision enables the County to terminate the Contract at its sole discretion at any time when it is deemed to be in its best interest. Under the negotiated alternative language, the Contract can be terminated for convenience following the third anniversary of the effective date, to enable GenSource to recover the costs it is investing in the upgrades and preparation for hosting the County's data. This three-year (3) period will also allow the County to find and transition to a new service provider, should this be found necessary. All other standard County termination provisions remain unchanged and are included within the Contract.

#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Continuation of this System is essential to ensure timely and accurate issuance of County workers' compensation benefits and payments, and to avoid potential imposition of State penalties for late benefit payments. Approval of the Contract will also ensure the County's continued compliance with mandatory California workers' compensation claim information reporting requirements, and with the CAO's long-term strategy to upgrade mission-critical applications.

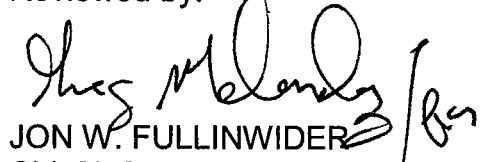
#### **CONCLUSION**

Upon approval by your Board, please return two signed originals of the contract and one adopted-stamped copy of the letter to the CAO Risk Management Branch, attention Rocky A. Armfield, County Risk Manager.

Respectfully submitted,

  
DAVID E. JANSSEN  
Chief Administrative Officer

Reviewed by:

  
JON W. FULLINWIDER  
Chief Information Officer

DEJ:RAA  
DU:DS:sg

Attachment

c: Executive Officer, Board of Supervisors  
Chief Information Officer  
County Counsel

**CHIEF ADMINISTRATIVE OFFICE**



**CONTRACT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**GENSOURCE CORPORATION**

**FOR**

**SOFTWARE MAINTENANCE AND  
APPLICATION HOSTING SERVICES**

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**CONTRACT FOR  
SOFTWARE MAINTENANCE AND APPLICATION HOSTING SERVICES**

**THIS CONTRACT** (together with the preamble, recitals and Exhibits hereto, the "Contract") is made and entered into as of the Effective Date by and between the County of Los Angeles, a political subdivision of the State of California ("County") and GenSource, a division of StrataCare, Inc., a Delaware corporation ("Contractor").

**RECITALS**

**WHEREAS**, County has a license for an automated workers' compensation claims administration system (the "System") for processing of Workers' Compensation claims which was acquired pursuant to that certain County Internal Services Purchase Order No. 31082350 dated April 25, 2006 by and between County and Contractor (the "Purchase Order");

**WHEREAS**, County desires to contract for the provision of software maintenance and application hosting services (collectively, the "Services") in connection with the System;

**WHEREAS**, County has determined that the Services are of a technical nature and is unable to recruit qualified personnel with the requisite training, knowledge, or experience to perform the Services;

**WHEREAS**, this Contract is therefore authorized under California Government Code Section 31000, which authorizes the Board of Supervisors to contract for special services;

**WHEREAS**, Contractor is a private firm specializing in providing software maintenance and application hosting services and possesses the competence, expertise, and personnel necessary to provide the Services upon the terms and conditions described hereunder;

**WHEREAS**, Contractor has previously provided County with software maintenance services with respect to the System under the Purchase Order, and is willing to provide the Services to County under this Contract;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F, G, H, I and J are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority.

- EXHIBIT A - Statement of Work
- EXHIBIT B - Pricing Schedule
- EXHIBIT C - Contractor's EEO Certification
- EXHIBIT D - County's Administration
- EXHIBIT E - Contractor's Administration

- EXHIBIT F - Contractor Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement
- EXHIBIT G - Jury Service Ordinance
- EXHIBIT H - Escrow Agreement
- EXHIBIT I - Safely Surrendered Baby Law
- EXHIBIT J - Contractor's Obligations as a "Business Associate" Under the Health Insurance Portability & Accountability Act of 1996 (HIPAA)

This Contract and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to Section 8.4 (Change Notices and Amendments) and signed by both parties.

## **2.0 DEFINITIONS**

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Acceptance: "Acceptance" shall mean County's written approval of any tasks, subtasks, deliverables, goods, services or other work provided by Contractor to County, consistent with the requirements of *Exhibit A - Statement of Work*.
- 2.2 Contract: "Contract" shall have the meaning set forth in the preamble.
- 2.3 Contractor: "Contractor" shall have the meaning set forth in the preamble.
- 2.4 Contractor's Project Manager: "Contractor's Project Manager" shall have the meaning specified in Section 7.1 (Contractor's Project Manager).
- 2.5 County's Contract Administrator: "County's Contract Administrator" shall have the meaning specified in Section 6.1 (County Contract Administrator).
- 2.6 County's Project Director: "County's Project Director" shall have the meaning specified in Section 6.2 (County Project Director)
- 2.7 County's Project Manager: "County's Project Manager" shall have the meaning specified in Section 6.3 (County Project Manager).
- 2.8 Day(s): "Day(s)" shall mean calendar day(s) unless otherwise specified.
- 2.9 Deficiency(ies): "Deficiency(ies)" shall mean and include defect(s) in design, development, programming, implementation, materials, or workmanship; error(s); omission(s); deviation(s) from published or mutually agreed upon standards, from any of the Specifications, or from any County-approved Deliverables; or other problem(s) which result in the System not performing in accordance with the provisions of this Contract, including, without limitation, the Specifications.
- 2.10 Department Head: "Department Head" shall mean the Chief Administrative Officer of the County of Los Angeles.

- 2.11 Deliverable(s): "Deliverable(s)" shall mean any task, subtask, item, and/or a service or other consideration to be provided by Contractor under this Contract.
- 2.12 Effective Date: "Effective Date" shall mean March 1, 2007 or the date the Contract is executed by the County of Los Angeles Board of Supervisors, whichever is later.
- 2.13 Fiscal Year: "Fiscal Year" shall mean the twelve (12) month period beginning July 1st and ending the following June 30th.
- 2.14 Source Code: "Source Code" shall have the meaning set forth in Subsection 3.15 of *Exhibit A - Statement of Work*.
- 2.15 Specifications: "Specifications" shall mean the functional application program specifications set forth in *Exhibit A - Statement of Work*.
- 2.16 System: "System" shall mean all Software, Hardware, third party software, conversion, interfaces, databases and services described in this Contract and as otherwise agreed to in writing by Contractor and County pursuant to Section 8.4 (Change Notices and Amendments) collectively comprising the Workers' Compensation Claims Administration System. Reference to the System may include one or more components or modules thereof or the entire System.
- 2.17 User: "User" shall mean any person or entity authorized by County to access or use the System or a System component.
- 2.18 Weekday Minimum Maintenance Period: The "Weekday Minimum Maintenance Period" shall mean the period between the hours of 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding the following holidays observed by Contractor: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, and Day after Christmas.

### **3.0 WORK**

- 3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, goods, services and other work as set forth in *Exhibit A - Statement of Work*.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

### **4.0 TERM OF CONTRACT**

- 4.1 The term of this Contract shall commence on the Effective Date and shall expire three (3) years thereafter, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The County shall have the sole option to extend the Contract term for up to two (2) additional one-year periods, for a maximum total Contract term of five (5) years. Each such option to extend shall be exercised at the sole discretion of the Chief Administrative

Officer ("CAO") or his or her designee, subject to Section 8.4 (Change Notices And Amendments) of this Contract.

- 4.3 Contractor shall notify the County when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, Contractor shall send written notification to the County at the address provided in *Exhibit D - County's Administration*.

## **5.0 CONTRACT SUM**

- 5.1 The maximum Contract sum under the terms of this Contract shall be the total monetary amount payable by County to Contractor for provision of the Services specified herein in accordance with *Exhibit B - Pricing Schedule*, of this Contract. For the first year of the term of the Contract, the maximum Contract sum shall be Six Hundred Seventeen Thousand Five Hundred Dollars (\$617,500). For subsequent years during the term of the Contract, the Contract sum shall be as set forth in *Exhibit B - Pricing Schedule*, of this Contract.
- 5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein.
- 5.3 Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor or its affiliates, whether through assignment, subcontract, delegation, or any other mechanism (but excluding a merger or sale of all or substantially all of Contractor's assets), with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.
- 5.4 Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the total Contract authorization under this Contract. Upon occurrence of this event, Contractor shall send written notification to the County at the address herein provided in *Exhibit D - County's Administration*.
- 5.5 Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Contract.
- 5.6 Invoices and Payments:
- 5.6.1 Contractor shall invoice County only for providing the tasks, deliverables, goods, services, and other work specified in *Exhibit A - Statement of Work* and elsewhere hereunder. Contractor shall prepare invoices, which shall include the charges owed to Contractor by County under the terms of this Contract. Contractor's payments shall be as provided in *Exhibit B - Pricing Schedule*, and Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved

in writing by County. If County does not approve work in writing, no work will be performed and no payment shall be due to Contractor for that work.

- 5.6.2 Contractor's invoices shall be priced in accordance with *Exhibit B - Pricing Schedule*.
  - 5.6.3 Contractor's invoices shall contain the information set forth in *Exhibit A - Statement of Work* describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.
  - 5.6.4 Contractor shall submit the monthly invoices to County by the fifteenth (15<sup>th</sup>) calendar day of the month following the month of service.
  - 5.6.5 All invoices under this Contract shall be submitted to the County's Project Director and the County's Project Manager.
  - 5.6.6 All invoices submitted by Contractor for payment must have the written approval of County's Project Director prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld, and in no instance will such approval take more than thirty (30) days from receipt of properly prepared invoices by County.
  - 5.6.7 If this Contract is terminated by County for default pursuant to Section 8.43 (Termination for Default), then, without excusing such default, and without prejudice to any other rights of County in this Contract or as provided by law, Contractor shall be entitled to receive payment for all work performed prior to the termination date and approved by County.
  - 5.6.8 If termination by County for default is a result of failure by Contractor to achieve Deliverables as thereafter determined by County, as set forth in *Exhibit A - Statement of Work*, and such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by County, then County shall be obligated to Contractor for the sums related to work performed and approved by County. The County's license to use the System shall remain in effect following the termination of this Contract.
- 5.7 Notwithstanding any other provision of this Contract, and in addition to the provisions of Section 5.6 (Invoices and Payments) and Attachment I (Performance Standards and Service Level Agreement) of *Exhibit A - Statement of Work*, and to any rights of County given by law or provided in this Contract, County may upon written notice to Contractor withhold payment for any Deliverable or other services while Contractor is in default hereunder, or at any time that Contractor has not provided a County-approved Deliverable which, under the approved Implementation Package as described within Section 3.12 of the Statement of Work, is identified as dependent on and is scheduled to be delivered prior to or concurrently with the Deliverables. This provision shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims pursuant to Section 8.17 (Dispute Resolution Procedure), provided that such default or non-delivery is not caused by an unreasonable delay or unreasonable lack of cooperation by County.

## **6.0 ADMINISTRATION OF CONTRACT - COUNTY**

A listing of all County Administration referenced herein is shown in *Exhibit D - County's Administration*. County shall notify Contractor in writing of any change in the names or addresses shown.

### **6.1 County's Contract Administrator:** Responsibilities of the County's Contract Administrator shall include:

6.1.1 Making changes in the terms and conditions of this Contract in accordance with Section 8.4 (Change Notices and Amendments); and

6.1.2 Providing direction to Contractor in the areas relating to County policy, information requirements, and procedural requirements.

### **6.2 County's Project Director:** Responsibilities of the County's Project Director shall include:

6.2.1 Authorizing and approving any and all Work Orders and invoices and ensuring that all required components are delivered by Contractor;

6.2.2 Providing direction to Contractor on all business assessment needs; and

6.2.3 Ensuring that the objectives of this Contract are met.

The County's Project Director is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

### **6.3 County's Project Manager:** Responsibilities of the County's Project Manager shall include:

6.3.1 Overseeing the day-to-day administration of this Contract;

6.3.2 Meeting with Contractor's Project Manager on a regular basis;

6.3.3 Inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of Contractor.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

## **7.0 ADMINISTRATION OF CONTRACT - CONTRACTOR**

### **7.1 Contractor's Project Manager**

7.1.1 Contractor's Project Manager is designated in *Exhibit E - Contractor's Administration*. Contractor shall notify County in writing (which may be in the form of email) of any change in the name or address of Contractor's Project Manager.

- 7.1.2 Contractor's Project Manager shall be responsible for Contractor's day-to-day activities as related to this Contract and shall coordinate with County's Project Manager on a regular basis.

## 7.2 Background and Security Investigations

- 7.2.1 Contractor staff performing work under this Contract shall undergo and pass Contractor's background investigation, as a condition of beginning and continuing to work under this Contract. The fees associated with obtaining the background information shall be at the expense of Contractor, regardless if Contractor's staff passes or fails the background clearance investigation. No person employed by the Contractor and assigned to the County shall have a high-grade misdemeanor and/or misdemeanor theft conviction or any felony convictions. Contractor shall be under a continuing obligation to disclose any subsequent criminal record information to the County and to remove an employee who in future incurs such record from performing work under this Agreement at County's request.
- 7.2.2 County retains the right to conduct its own background investigation of Contractor staff performing work under this Agreement at County's sole cost. County will not provide to Contractor or to Contractor's staff any information obtained through any County conducted background clearance.
- 7.2.3 Removal of any Contractor staff pursuant to this Section 7.2 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

## 7.3 Confidentiality

Each party shall maintain the confidentiality of all records obtained from the other party under this Contract in material compliance with all applicable federal, State or local laws, ordinances, regulations and directives relating to confidentiality. Each party shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract. Contractor shall cause each employee performing services covered by this Contract to sign and adhere to *Exhibit F - Contractor Acknowledgment and Confidentiality Agreement*).

## 8.0 **STANDARD TERMS AND CONDITIONS**

### 8.1 **ASSIGNMENT AND DELEGATION**

- 8.1.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, either in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. Notwithstanding the foregoing, a merger by Contractor with or the sale of all or substantially all of Contractor's assets to a third party shall not constitute an assignment, provided that the third party agrees in writing that it shall be bound by all of the terms and conditions of this Contract (a "Permitted Transfer"). For purposes of this Section 8.1, County consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract shall be deductible, at the County's sole discretion, against the claims, which the Contractor may have against the County.

8.1.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interests they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract, except that this provision shall not apply to a Permitted Transfer.

8.1.3 If any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract, except that this provision shall not apply to a Permitted Transfer. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

## **8.2 AUTHORIZATION WARRANTY**

Each party represents and warrants that the person executing this Contract on its behalf is an authorized agent who has actual authority to bind such party to each and every term, condition, and obligation of this Contract and that all requirements of such party have been fulfilled to provide such actual authority.

## **8.3 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Contractor under the Contract shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. The Contractor shall have thirty (30) calendar days after receipt of such notice within which to terminate this Contract and receive payment for all work performed by Contractor and approved by County prior to the termination date. If Contractor does not exercise its right to terminate this Contract, Contractor shall continue to provide all of the services set forth in the Contract.

## **8.4 CHANGE NOTICES AND AMENDMENTS**

8.4.1 The County reserves the right to initiate Change Notices that do not materially affect the scope, term, Contract Sum or payments. All such changes must be approved in advance by the parties and shall be accomplished with an executed Change Notice signed by the Contractor and by the County's Contract Administrator.

8.4.2 For any change which materially affects the scope of work, term, Contract Sum, payments, or any term or condition included under this Contract, a negotiated written Amendment to this Contract shall be prepared and approved by the County's Board of Supervisors and executed by an authorized representative of County and Contractor.

8.4.3 The County's Board of Supervisors or CAO, or designee, may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County shall notify Contractor of such proposed addition and/or change. If such modifications or related changes are accepted by Contractor, an Amendment to the Contract shall be prepared and executed by the Contractor and by the CAO, or designee.

## **8.5 COMPLAINTS**

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints about the System and/or the services to be provided pursuant to this Contract.

8.5.1 Within ten (10) business days after Contract Effective Date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to user complaints.

8.5.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

8.5.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within five (5) business days.

8.5.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.

8.5.5 The Contractor shall preliminarily investigate all complaints and notify the County's Project Manager and County's Project Director of the status of the investigation within five (5) business days of receiving the complaint.

8.5.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

8.5.7 Copies of all written responses shall be sent to the County's Project Manager and County's Project Director within three (3) business days of mailing to the complainant.

## **8.6 COMPLIANCE WITH APPLICABLE LAW**

8.6.1 The Contractor shall comply in all material respects with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

8.6.2 The Contractor shall indemnify and hold harmless the County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any material violation on the part of the Contractor or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

## **8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with *Exhibit C - Contractor's EEO Certification*.

## **8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

### **8.8.1 Jury Service Program:**

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as *Exhibit G* and incorporated by reference into and made a part of this Contract.

### **8.8.2 Written Employee Jury Service Policy:**

1. Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If

Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall also be subject to the provisions of this Subsection. The provisions of this Subsection shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this Subsection of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

## **8.9 CONFLICT OF INTEREST**

- 8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.
- 8.9.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that are reasonably expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Subsection shall be a material breach of this Contract.

**8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the Effective Date of this Contract to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

**8.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

8.11.1 Should the Contractor require additional or replacement personnel after the Effective Date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor.

8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

**8.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

**8.12.1 Responsible Contractor:**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

**8.12.2 Chapter 2.202 of the County Code:**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County, provided that the County shall make all payments for work performed and approved by County prior to the termination date.

**8.12.3 Non-responsible Contractor:**

The County may debar a Contractor if the Board of Supervisors finds, in its reasonable discretion, that the Contractor has done any of the following: (1) violated a material term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects

on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

8.12.4 Contractor Hearing Board:

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will

provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board

#### 8.12.5 Subcontractors of Contractor:

These terms shall also apply to subcontractors of County Contractors.

### 8.13 **CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

### 8.14 **CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

8.14.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

## **8.15 COUNTY'S QUALITY ASSURANCE PLAN**

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract, provided that the County shall make all payments for work performed by Contractor and approved by County prior to the termination date.

## **8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

8.16.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.16.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand.

## **8.17 DISPUTE RESOLUTION PROCEDURE**

8.17.1 Contractor and County agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Contract. All such disputes shall be subject to the provisions of this Section 8.17.

8.17.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which County, in its sole discretion, determines should be delayed as a result of such dispute or if Contractor has a reasonable basis for not performing. County shall continue to pay sums not in dispute during any such period of continued performance.

8.17.3 If Contractor fails (without a reasonable basis) to continue without delay its performance hereunder which County, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by Contractor or County as a result of Contractor's failure to continue to so perform shall be borne by Contractor, and Contractor shall make no claim whatsoever against County for such costs. Contractor shall promptly reimburse County for such County costs, as determined by County, or County may deduct all such additional costs from any amounts due to Contractor from County, whether under this Contract or otherwise.

8.17.4 If County fails to continue without delay to perform its responsibilities under this Contract which County, in its sole discretion, determined should not be delayed as a result of such dispute, then any additional costs incurred by the Contractor or County as a result of County's failure to continue to so perform shall be borne by

County, and County shall make no claim whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for all such additional Contractor costs subject to the written approval of such costs by County.

- 8.17.5 In the event of any dispute between the parties with respect to this Contract, Contractor and County shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 8.17.6 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Contract Administrators for further consideration and discussion to attempt to resolve the dispute.
- 8.17.7 In the event that the Contract Administrators are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall immediately be submitted to Contractor's President and County's Assistant Administrative Officer for further consideration and discussion to attempt to resolve the dispute.
- 8.17.8 In the event that the Contractor's President and County's Assistant Administrative Officer are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then each party may assert its other rights and remedies as provided by law.
- 8.17.9 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all levels described in this Section 8.17, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in writing by exchange of correspondence.
- 8.17.10 Notwithstanding any other provision of the Contract, County's right to terminate this Contract pursuant to Section 8.42 (Termination for Convenience), Section 8.43 (Termination for Default), Section 8.45 (Termination for Insolvency), or any other termination provision hereunder, and County's right to seek injunctive relief to enforce the provisions of Section 7.4 (Confidentiality), Section 9.4 (Proprietary Considerations) and Section 9.8 (Confidentiality of County Records), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of County's rights, and shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims after any such termination or such injunctive relief has been obtained.

## **8.18 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 8.18.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by

Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

8.18.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

#### **8.19 FACSIMILE REPRESENTATIONS**

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party (or other representations by electronic means such as email), when appearing in appropriate places on the Change Notices and Amendments prepared pursuant to Section 8.4, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Contract, such that the parties need not follow up facsimile (or other electronic) transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

#### **8.20 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

#### **8.21 GOVERNING LAW, JURISDICTION, AND VENUE**

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

#### **8.22 INDEPENDENT CONTRACTOR STATUS**

8.22.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.22.3 Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

8.22.4 Contractor shall adhere to the provisions stated in Section 7.4 (Confidentiality).

## **8.23 INDEMNIFICATION**

Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Contract. Contractor shall not be obligated to indemnify for County's sole negligence.

## **8.24 GENERAL INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the County and during the term of this Contract, the Contractor shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Contract. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County. Such coverage shall be provided and maintained at the Contractor's own expense.

**8.24.1 Evidence of Insurance:** Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered to the County Project Manager prior to commencing services under this Contract. Such certificates or other evidence shall:

- Specifically identify this Contract;
- Clearly evidence all coverages required in this Contract;
- Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance;
- Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Contract; and
- Identify any deductibles or self-insured retentions for the County's approval. The County retains the right to require the Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or,

require the Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

**8.24.2 Insurer Financial Ratings:** Insurance is to be provided by an insurance company reasonably acceptable to the County with an A.M. Best rating of not less than A:VII unless otherwise approved by the County.

**8.24.3 Failure to Maintain Coverage:** Failure by the Contractor to maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the Contract upon which the County may immediately terminate or suspend this Contract. The County, at its sole option, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase such required insurance coverage, and with notice to the Contractor, the County may deduct from sums due to the Contractor any premium costs advanced by the County for such insurance.

**8.24.4 Notification of Incidents, Claims or Suits:** Contractor shall report to the County:

- Any accident or incident relating to services performed under this Contract which involves injury or property damage which may result in the filing of a claim or lawsuit against the Contractor and/or the County. Such report shall be made in writing within 24 hours of occurrence.
- Any third party claim or lawsuit filed against the Contractor arising from or related to services performed by the Contractor under this Contract.
- Any injury to a Contractor employee that occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County Contract Manager.
- Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to the Contractor under the terms of this Contract.

**8.24.5 Compensation for County Costs:** In the event that the Contractor fails to comply with any of the indemnification or insurance requirements of this Contract, and such failure to comply results in any costs to the County, the Contractor shall pay full compensation for all costs incurred by the County.

**8.24.6 Insurance Coverage Requirements for Subcontractors:** The Contractor shall ensure any and all subcontractors performing services under this Contract meet the insurance requirements of this Contract by either:

- The Contractor providing evidence of insurance covering the activities of subcontractors, or
- The Contractor providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. The County retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

## 8.25 INSURANCE COVERAGE REQUIREMENTS

**8.25.1 General Liability** insurance written on ISO policy form CG 00 01 or its equivalent with limits of not less than the following. County will accept Contractor use of excess liability coverage to satisfy the required limits.

General Aggregate:	\$4million
Products/Completed Operations Aggregate:	\$4million
Personal and Advertising Injury:	\$2million
Each Occurrence:	\$2million

**8.25.2 Automobile Liability** written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

**8.25.3 Workers' Compensation and Employers' Liability** insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which the Contractor is responsible. If the Contractor's employees will be engaged in maritime employment, coverage shall provide workers' compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which the Contractor is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

**8.25.4 Professional Liability:** Insurance covering liability arising from any error, omission, negligent or wrongful act of the Contractor, its officers or employees with limits of not less than \$2 million per occurrence. Such insurance shall include coverage for any actual or alleged infringement of any patent, copyright or other rights of any third party, or any actual or alleged trade secret disclosure or misappropriation. The coverage also shall provide an extended two (2) year reporting period commencing upon termination or cancellation of this Contract.

**8.25.5 Crime Coverage:** Insurance with limits in amounts not less than indicated below covering against loss of money, securities, or other property referred to in this Contract, and naming the County as loss payee.

Employee Dishonesty:	\$500,000
Computer Fraud:	\$500,000

## 8.26 NONDISCRIMINATION AND AFFIRMATIVE ACTION

**8.26.1** The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or

mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

- 8.26.2 The Contractor shall certify to, and comply with, the provisions of *Exhibit C - Contractor's EEO Certification*.
- 8.26.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.26.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental disability, marital status, or political affiliation.
- 8.26.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- 8.26.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Section 8.28 when so requested by the County.
- 8.26.7 If the County finds that any provisions of this Section 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.
- 8.26.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

## **8.27 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Contract shall not restrict the CAO from acquiring similar, equal or like goods and/or services from other entities or sources.

**8.28 NOTICE OF DELAYS**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) day, give notice thereof, including all relevant information with respect thereto, to the other party.

**8.29 NOTICE OF DISPUTES**

The Contractor shall bring to the attention of the County Project Manager, County Project Director and/or County Contract Administrator any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County Project Manager, County Project Director or County Contract Administrator is not able to resolve the dispute, the CAO, or designee, shall resolve it.

**8.30 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

**8.31 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in *Exhibit I* of this Contract and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

**8.32 NOTICES**

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in *Exhibit D - County's Administration* and *Exhibit E - Contractor's Administration*. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Department Head or his /her designee shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

**8.33 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

**8.34 PUBLIC RECORDS ACT**

8.34.1 Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and

accounting records pursuant to Section 8.38 (Record Retention and Inspection/Audit Settlement), of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction, provided that the County will endeavor to provide Contractor with prompt notice of any such required disclosure so that Contractor may seek to prevent or limit the scope of such disclosure.

- 8.34.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

### **8.35 PUBLICITY**

- 8.35.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself and expand its business opportunities, the County shall not inhibit the Contractor from disclosing this Contract under customary confidentiality arrangements to its prospective business partners or otherwise publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity or other disclosure material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Contract Administrator. The County shall not unreasonably withhold written consent.

- 8.35.2 The Contractor may, without the prior written consent of County, indicate in its proposals to customers and business partners and in its sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Section 8.37 shall apply.

### **8.36 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that, upon reasonable prior notice to Contractor and no more than once per calendar year, the

County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Contract during regular business hours. All such material, including, but not limited to, all financial records, timecards and other employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in either Los Angeles or Orange County, and if any such material is located outside Los Angeles County, the Contractor shall deliver such materials to the County at a location in Los Angeles County.

- 8.36.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. The County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.36.2 Failure on the part of the Contractor to comply with any of the provisions of this Section 8.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.
- 8.36.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County may conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

### **8.37 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

### **8.38 SUBCONTRACTING**

- 8.38.1 The requirements of this Contract may not be subcontracted by the Contractor without the advance approval of the County. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

- 8.38.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:
- A description of the work to be performed by the subcontractor;
  - A draft copy of the proposed subcontract; and
  - Other pertinent information and/or certifications requested by the County.
- 8.38.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Contractor employees.
- 8.38.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 8.38.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its subcontractors of this County right.
- 8.38.6 The County's Contract Administrator is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees.
- 8.38.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.38.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to the County Contract Administrator before any subcontractor employee may perform any work hereunder.

**8.39 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Section 8.14 (Contractor's Warranty of Adherence to County's Child Support Compliance Program), shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within 90 calendar days of within notice shall be grounds upon which County may terminate this Contract pursuant to Section 8.41 (Termination for Default), and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

**8.40 TERMINATION FOR CONVENIENCE**

- 8.40.1 Following the third anniversary of the Effective Date, this Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such

termination becomes effective. The date upon which such termination becomes effective shall be no less than ninety (90) days after the notice is sent.

8.40.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.40.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with Section 8.38 (Record Retention & Inspection/Audit Settlement).

#### **8.41 TERMINATION FOR DEFAULT**

8.41.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the reasonable judgment of County's Contract Administrator:

- Contractor has materially breached this Contract;
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within 15 (fifteen) days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.41.2 In the event that this Contract is terminated in whole or in part as provided in Subsection 8.41.1, (i) the County shall pay Contractor for all work performed and approved by County prior to the termination date, and (ii) if the County has terminated the Contract, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Subsection.

8.41.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in Subsection 8.41.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the

Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Subsection 8.41.3, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

- 8.41.4 If, after the County has given notice of termination under the provisions of this Section 8.41, it is determined by the County that the Contractor was not in default under the provisions of this Section 8.41, or that the default was excusable under the provisions of Subsection 8.41.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8.40 (Termination for Convenience).
- 8.41.5 In the event the County terminates this Contract in its entirety due to the Contractor's default as provided in Subsection 8.41.1, the Contractor and the County agree that the County will have actual damages, which are extremely difficult to calculate and impracticable to fix and which will include, but are not limited to, the County's costs of procurement of replacement services and costs incurred due to delays in procuring such services. Therefore, the Contractor and the County agree that the County shall, at its sole option and in lieu of the provisions of Subsection 8.41.2, be entitled to liquidated damages from the Contractor, pursuant to California Civil Code Section 1671, in the amount of Five Thousand Dollars (\$5,000) or five percent (5%) of the applicable year's Contract sum, whichever is less, as equitable compensation to the County for such actual damages. This amount of liquidated damages shall be either paid by the Contractor to the County by cash payment upon demand or, at the sole discretion of the CAO, or designee, deducted from any amounts due to the Contractor by the County, whether under this Contract or otherwise. These liquidated damages shall be in addition to any credits, which the County is otherwise entitled to under this Contract, and the Contractor's payment of these liquidated damages shall not in any way change, or affect the provisions of Section 8.23 - Indemnification
- 8.41.6 The rights and remedies of the parties provided in this Section 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 8.41.7 Contractor may, by written notice to County, terminate the whole or any part of this Contract, if County has materially breached this Contract and has not cured such material breach within sixty (60) days of receiving notice of such breach.

#### **8.42 TERMINATION FOR IMPROPER CONSIDERATION**

- 8.42.1 County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to Contractor's performance pursuant to this Contract. In the event of such

termination, County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by Contractor.

8.42.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.42.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **8.43 TERMINATION FOR INSOLVENCY**

8.43.1 County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for Contractor; or
- The execution by Contractor of a general assignment for the benefit of creditors.

8.43.2 The rights and remedies of County provided in this Section 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **8.44 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by Contractor, shall fully comply with County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which County may in its sole discretion, immediately terminate or suspend this Contract.

#### **8.45 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Contract, County shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in County's Budget for each such future fiscal year, provided that Contractor shall have the right to stop its performance hereunder as of the first day of a fiscal year, without any liability whatsoever to the County, until funds for this Contract are appropriated for such fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for

which funds were appropriated. County shall notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

**8.46 VALIDITY**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

**8.47 WAIVER**

No waiver by either party of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of a party to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Section 8.47 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**8.48 WARRANTY AGAINST CONTINGENT FEES**

8.48.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.48.2 For breach of this warranty, County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**9.0 UNIQUE TERMS AND CONDITIONS**

**9.1 OWNERSHIP OF COUNTY DATA**

9.1.1 County shall be the sole owner of all right, title and interest, including copyright, in and to all of County's data on the System.

9.1.2 County will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.

9.1.3 All the rights and obligations of this Subsection 9.1 shall survive the expiration or termination of this Contract.

## **9.2 OWNERSHIP OF THE SYSTEM AND LICENSE**

Contractor will retain all right, title and interest, including copyright, in and to the Source Code and all intellectual property embodied in and associated with the System modules, and the County shall have a perpetual license to use the System.

Contractor hereby grants to County a non-exclusive, perpetual, world-wide license to copy, disclose, maintain and, for up to three hundred (300) concurrent and up to six hundred thirty one (631) remote Users, use the System, and any other tools, procedures or know-how that become inextricably embodied in the System. Contractor hereby grants an option to County, exercisable at County's sole and absolute discretion, to purchase from Contractor additional concurrent User licenses and additional remote User licenses, at the prices set forth in *Exhibit B - Pricing Schedule*.

### **9.2.1 Escrow**

The Contractor shall enter into its customary agreement (the "Escrow Agreement") with an outside third party to escrow the Source Code, programming information and Documentation for the Application Software modules version licensed by the County (including all modules, database tables and definitions, files, customizations, data conversion programs and interfaces) and any and all Updates or version changes provided to the County at the inception of this Contract and thereafter. The County shall pay all the costs associated with such escrow arrangement, including, without limitation, the fees of the escrow agent. At the conclusion of the development, programming, construction and customization of the County's Application Software modules, the customized version will replace the Source Code in escrow, and the Escrow Agreement shall be amended to reflect the County's customized Application Software modules and the revised escrow arrangements. Contractor shall, on a yearly basis, at the County's cost, arrange for an independent audit of this escrow to confirm the availability and completeness of the information and that the most current version of the System is in escrow.

## **9.3 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

9.3.1 The Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, as such are incurred, for or by reason of any actual or alleged infringement of any patent or copyright, or other rights of any third party, or any actual or alleged trade secret disclosure or misappropriation, arising from or related to the System or the operation and utilization of Contractor's work under this Contract (hereinafter collectively referred to as "Infringement Claim(s)"). Contractor shall have no obligation to County under this Section 9.3 if any Infringement Claim is caused by use by County of the System other than in accordance with the Specifications and other applicable Documentation, as initially determined by County's Contract Administrator but subject to Section 8.17 (Dispute Resolution Procedure). Any legal defense pursuant to Contractor's indemnification obligations under this Section 9.3 shall be conducted by Contractor and performed by counsel selected by Contractor. Notwithstanding the preceding sentence, County shall have the

right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law and this Contract, County shall be entitled to reimbursement for all such costs and expenses.

- 9.3.2 Without limiting the foregoing, in the event County's Contract Administrator becomes aware that ongoing use of the System, or any part thereof, is the subject of any Infringement Claim that might preclude or impair County's use of the System or any portion thereof (e.g. injunctive relief), or that County's continued use of the System or a portion thereof may subject it to punitive damages or statutory penalties or other costs or expenses, County shall give written notice to Contractor of such fact(s). Upon notice of such facts, Contractor shall, at no cost to County, either (1) procure the right, by license or otherwise, for County to continue to use the System or affected part(s) thereof to the same extent of County's license under this Contract, or (2) to the extent Contractor is unable to procure such right, replace or modify the System or the affected part(s) with another part or component of equivalent quality and performance capabilities, in County's determination, to become non-infringing, non-misappropriating and/or non-disclosing.
- 9.3.3 If Contractor fails to complete the remedial acts set forth above within ninety (90) days after the date of the written notice from County, County shall have the right to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the System or the affected part(s) thereof or damages or other costs or expenses (hereafter referred to as "County's Remedial Acts"). Contractor shall indemnify County for all amounts paid and all direct and indirect costs associated with County's Remedial Acts. Failure by Contractor to pay such amounts and costs within ten (10) days after receiving an invoice from County shall, in addition to, and cumulative to all other remedies entitle County to immediately withhold payments due to Contractor up to the total of the amounts and costs paid in connection with County's Remedial Acts.

#### 9.4 LIMITED WARRANTY - DISCLAIMER AND LIMITATION OF LIABILITY

- 9.4.1 **Limited Warranty.** Should the System fail to meet its Specifications, County shall notify Contractor in writing no later than 30 days after initial installation. Notwithstanding anything to the contrary in this Contract, Contractor's entire liability and County's exclusive remedy in such an event shall be the refund of all license fees paid to date, or the sum of \$20,000, whichever amount shall be greater. **Except for the foregoing, the System is provided "as is," without additional warranty of any kind, and Contractor expressly disclaims all other warranties, express or, including, but not limited to, the implied warranties of design, merchantability, fitness for a particular purpose, any warranties arising from a course of dealing, usage, or trade practice.** Contractor does not warrant that the functions contained in the System will meet County's requirements, or that the operation of the System will be uninterrupted or error-free, or that defects in the System will be corrected. Furthermore, Contractor does not warrant or make any representations regarding the use or the results of the use of the System in terms of its correctness, accuracy, reliability, or otherwise. No oral or written information or advice given by Contractor or Contractor's representatives shall create any warranty with regard to the System or in any way increase the scope of this warranty.

- 9.4.2 **Limitation of Liability.** Under no circumstances, including negligence, shall Contractor be liable for any lost revenue or profits or any incidental, indirect, special, or consequential damages that result from the use or inability to use the System, even if Contractor or Contractor's authorized representative has been advised of the possibility of such damages. In no event shall Contractor's total liability to County for all damages, losses, and causes of action, whether in Contract, tort (including negligence) or otherwise, exceed a sum equal to ninety (90) days service fees paid by County to Contractor under this Contract. In addition, Contractor will not be liable for any claims of any party arising out of any alleged or actual infringement by the System of any intellectual property rights of any third party. This limitation of liability provision, however, shall not relieve Contractor's indemnification obligations to third parties pursuant to Section 8.23 (Indemnification), of this Contract nor shall it apply to any loss or related expense which is actually covered under any of the commercial insurance policies required to be maintained by Contractor pursuant to this Contract.
- 9.4.3 **Limitations Concerning Third Party Material.** Contractor shall have no responsibility under any condition for performance of any hardware or programs licensed by it from third parties, and County shall rely solely on the manufacturers' warranty (if any).
- 9.4.4 **Exclusions.** Contractor shall not be responsible to the extent any failure to perform in accordance with the foregoing warranties is caused by (a) County's failure to use the System in accordance with instructions included in the Documentation provided to County by Contractor, (b) the modification of the System by any person other than Contractor, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing), or (c) problems caused by the Server's connectivity to County's network. If Contractor is requested by County to service such matters, County shall pay Contractor an additional fee for such support services.
- 9.4.5 **Risks Considered.** Contractor's pricing reflects the allocation of risks and limitation of liability in this Contract.

## 9.5 WARRANTIES

- 9.5.1 Contractor shall perform warranty services as set forth in this Contract.
1. The System shall be in substantial compliance with the Specifications and with the descriptions and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, configuration, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in *Exhibit A - Statement of Work* and its Attachments.
  2. All tasks, subtasks, Deliverables, goods, services, and other work shall be performed in a timely and professional manner by qualified personnel.
  3. All tasks, subtasks, Deliverables, good, services, and other work shall be completed in accordance with this Contract, Deliverable documentation and manufacturer's specifications.

4. The System components shall be capable of interconnecting and/or interfacing with each other, when taken together, shall be capable of delivering all of the functionality as set forth in this Contract (including, without limitation, the Specifications and *Exhibit A - Statement of Work* and Attachments thereto).
5. Contractor shall not knowingly cause any unplanned interruption of the operations of, or accessibility to the System or any System component through any device, method or means including, without limitation, the user of any "virus," "lockup," "time bomb," or "key lock," "worm," device or program, or disabling code, which has the potential or capability of compromising the security of County's confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the System or any System component to County or any User or which could alter, destroy, or inhibit the User of the System, any System component, or the data contained therein (collectively referred to for purposes of this Subsection as "Disabling Device(s)" which could block access to or prevent the use of the System or any System component by County or Users. Contractor represents, warrants and agrees that it has not purposely placed, nor is it aware of, any Disability Device on any System component provided to County under this Contract, nor shall Contractor knowingly permit any subsequently delivered System component to contain any Disabling Device, other than lock-offs contained on the delivered media which only prevents user of software contained on such media other than System components.
6. The System shall be in substantial compliance with the performance standards set forth in Attachment I (Performance Standards Requirements) of *Exhibit A - Statement of Work*.
7. Provided that County is paying the fee listed in *Exhibit B - Pricing Schedule* for services pursuant to Subsection 5.2 (Basic Monthly Maintenance and Support) of *Exhibit A - Statement of Work*, then all Updates, enhancements, improvements, releases or version of the System, or any component or module of the System (other than Customization), and all available Documentation related thereto, shall be provided to County, at no additional cost over and above the sums otherwise payable by County.
8. Contractor shall use its best efforts to prevent viruses from being incorporated or introduced into the System, or Updates or enhancements thereto prior to delivery thereof to County, and shall utilize its best efforts to prevent any viruses being incorporated or introduced in the process of Contractor's loading of the System, Updates and enhancements thereto, or being introduced in the process of Contractor's performance of online support.

#### **9.5.2 Additional Warranties**

Contractor further represents, warrants, covenants and agrees throughout the term of this Agreement to all of the following in providing the System, conversions, and services of Contractor described herein:

1. County shall be entitled to use the System and all System components subject only to County's obligation to make the required payments under this Contract. Contractor represents and warrants that this Contract is neither subject nor subordinate to any right or claim of any third party, including, without limitation, Contractor's creditors. Further, Contractor represents and warrants that during the term of this Contract, it shall not subordinate this Contract or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the System and System components in accordance with this Contract.
2. Contractor shall escrow the Source Code for the account of the County, subject to the provisions of Section 9.2.1 (Escrow).
3. Contractor is duly authorized to grant to County all rights, including, but not limited to, license rights, granted by this Contract with respect to all Application Software.

#### **9.5.3 Continuous Product Support**

If Contractor assigns this Contract, is acquired, becomes otherwise controlled by another individual or entity, or sells, assigns, or transfers more than fifty percent (50%) of its interest in the System (generically referred to as a "Successor Event"), such successor shall assume in writing all of the obligations of Contractor under this Contract.

#### **9.5.4 Third Party Software**

Certain Application Software (herein "Third Party Software"), is owned by third parties. Contractor hereby represents and warrants that none of the System other than the Third Party Software is owned by third parties.

##### **1. Modification**

Contractor represents and warrants that it has not modified and shall not modify, nor does Contractor have any need to modify, Third Party Software in order for the System to fully perform in accordance with warrants that it does not have any license or other right to modify Third Party Software and that Third Party Software shall be provided to County in the same unmodified form as received by Contractor from the applicable third party. Contractor represents and warrants that Third Party Software shall, together with the remainder of the System, fully satisfy all requirements of the Contract without the need for any modification of Third Party Software by Contractor or otherwise.

##### **2. License Agreement**

County acknowledges that it may have to execute certain third party license agreements in respect to third party software. To the extent that any such third party license agreement conflicts with this Contract as it applies to County's right to use or modify the System, Contractor shall

take all necessary action and pay all sums required to provide County with all the rights to use and modify the System afforded by this Contract. Contractor warrants that whether or not such third party license agreements are required of County, County shall receive perpetual licenses of all third party software that shall allow use of the System in accordance with all of the terms of this Contract, providing County pays any required maintenance fees.

3. In the event it nonetheless becomes necessary to modify third party software to satisfy any of the requirements of this Contract, Contractor shall promptly, at no cost to County, either : (1) obtain a license from the appropriate third party which shall enable Contractor to modify such third party software, and Contractor shall provide all necessary modifications or (2) provide an upgrade or alternative solution, which is functionally equivalent, in County's Contract Administrator's reasonable determination, in lieu of modifying such third party software. If County exercises its option to terminate this Contract for convenience pursuant to Section 8.42 (Termination for Convenience), the obligations of Contractor as set forth in this Subsection shall be null and void. Nothing herein shall require Contractor to pay for a new release, version, or revision of third party software, which is not otherwise provided under maintenance and support.

#### **9.6 TIME IS OF THE ESSENCE**

Time is of the essence for Contractor under performance of this Contract.

#### **9.7 CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (HIPAA)**

County is subject to the administrative simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under this Contract, Contractor provides services to County and Contractor receives, has access to, and/or creates Protected Health Information as defined in *Exhibit I - Contractor's Obligations as a "Business Associate" Under Health Insurance Portability & Accountability Act of 1996 (HIPAA)* in order to provide those services. County and the Contractor therefore agree to the terms of *Exhibit J*.

#### **9.8 CONFIDENTIALITY OF COUNTY RECORDS**

- 9.8.1 Contractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, County records, claimant/plaintiff records and similar information, in accordance with all applicable Federal, State and local laws, regulations, ordinances, guidelines and directives relating to confidentiality. Contractor shall inform all of its officers, employees and agents providing services hereunder of the confidentiality provisions of this Contract. Contractor shall provide to County an executed *Exhibit F - Contractor Acknowledgement and Confidentiality Agreement* for each of its employees performing work under this Contract in accordance with Section 8.22 (Independent Contractor Status). Contractor shall indemnify and hold harmless County, its officers, employees, and agents, from and against any and all loss, damage, liability, and expense, including, but not limited to, defense costs and legal, accounting and other

expert, consulting or professional fees, arising from any disclosure of such records and information by Contractor, its officers, employees, or agents, except for any disclosure authorized by this Section 9.8.

- 9.8.2 With respect to any identifiable information concerning any claimant/plaintiff that is obtained by Contractor, Contractor shall: (1) not use any such information for any purpose whatsoever other than carrying out the express terms of this Contract; (2) promptly transmit to County all requests for disclosure of any such information; (3) not disclose, except as otherwise specifically permitted by this Contract, any such information to any person or organization other than County without County's prior written authorization that the information is releasable; and (4) at the expiration or termination of this Contract, return all such information to County or maintain such information according to the written procedures sent to Contractor by County for this purpose.

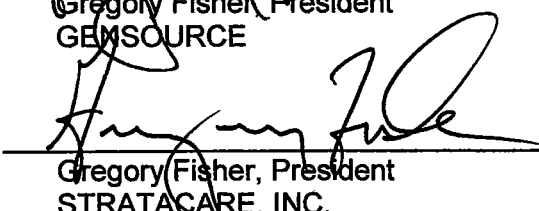
**IN WITNESS WHEREOF**, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

**COUNTY OF LOS ANGELES**

By \_\_\_\_\_  
Chair, Board of Supervisors

**CONTRACTOR**

By  \_\_\_\_\_  
Gregory Fisher, President  
GENSOURCE

By  \_\_\_\_\_  
Gregory Fisher, President  
STRATACARE, INC.

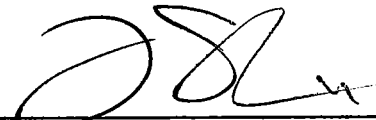
**ATTEST:**

SACHI A. HAMAI  
Executive Officer-Clerk  
of the Board of Supervisors

By \_\_\_\_\_

**APPROVED AS TO FORM:**

RAYMOND G. FORTNER, JR.  
County Counsel

By  \_\_\_\_\_  
Jose Silva  
Principal Deputy County Counsel

## STATEMENT OF WORK

### 1.0 BACKGROUND

COUNTY has a license for an automated Workers' Compensation (WC) Claims Administration System from GenSource Corporation.

COUNTY contracts with WC third party administrators (WC TPAs) to provide claims administration. Along with the WC TPAs, the WC Claims Administration System is used by over 300 end users to process, monitor, and report on COUNTY workers' compensation claims. System maintenance is required to ensure timely and accurate administration and processing of these claims.

### 2.0 SCOPE

This Exhibit A - Statement of Work (SOW) defines the services which CONTRACTOR shall provide to COUNTY on a fixed-price deliverable base which shall include: 1) upgrade to the new CONTRACTOR-based GenIRIS ASP; 2) Basic Monthly Maintenance and Support, and 3) customizations to CONTRACTOR'S identified software package (Software), as defined in Subparagraph 3.10, below.

### 3.0 DEFINITIONS

3.1 Acceptance; Accepted

"Acceptance" or "Accepted" shall mean COUNTY'S written approval of any task, subtask, deliverable, good, services or other work provided by CONTRACTOR to COUNTY, consistent with the requirements in Subparagraph 4.1.4, herein.

3.2 COUNTY Fiscal Year

As used herein, COUNTY Fiscal Year (FY) shall mean the twelve (12) month period beginning July 1<sup>st</sup> and ending June 30<sup>th</sup>.

3.3 Customization(s)

Customizations shall mean any change(s) to the System not covered under the Basic Monthly Maintenance and Support and pursuant to Subparagraph 5.1, GenIRIS ASP Implementation herein.

3.4 Deficiency(ies)

Deficiency(ies) shall mean and include defect(s) in design, development, programming, implementation, materials, or workmanship; error(s); omission(s); deviation(s) from published or mutually agreed upon standards, or from any of the Specifications, or from any COUNTY-approved Deliverables; or other problem(s) which result in the System not performing in accordance with the provisions of the Contract, including, without limitation, the Specifications.

3.5 Deliverable(s)

Deliverable(s) shall mean any task, subtask, item, and/or a service or other consideration to be provided by CONTRACTOR under the Contract.

3.6 Final Acceptance

Final Acceptance shall mean COUNTY'S sole and absolute discretion to approve in writing the work performed.

3.7 FROI-SROI – EDI

FROI-SROI – EDI shall mean First Report of Injury-Subsequent Report of Injury – Electronic Data Interface. COUNTY is required by the State of California (State) to report all injuries to the State.

3.8 GenIRIS ASP

GenIRIS ASP shall mean the web enabled version of the GenIRIS application; a graphics based version of the GenCOMP software.

3.9 GenSource Hardware (Hardware)

Hardware shall mean but is not limited to all equipment purchased by CONTRACTOR necessary to operate COUNTY'S WC Claims Administration system, including equipment purchased by any of CONTRACTOR'S Subcontractor(s).

3.10 GenSource Identified Software Package (Software)

Software shall mean all GenSource applications necessary to successfully run COUNTY'S WC Claims Administration System as established by COUNTY. Software shall also mean third party software as described in Subparagraph 3.19, below. Software shall include but is not limited to:

- ◆ GENCOMP – a character based application running on a legacy system that provides claims administration functions.
- ◆ GENLEGAL – a GenComp sub-system (an application running within the GenComp environment) that provides additional functions for the administration of litigated claims.
- ◆ Data Warehouse – Data store capturing data from the claims database for simple and efficient reporting.

3.11 Hosting Services

Hosting Services shall mean the secure environment set-up and maintained by CONTRACTOR at CONTRACTOR'S facility, in which COUNTY data is retained.

3.12 Implementation Package

Implementation Package shall mean the documents listed below that describe the procedures to design and implement a project for requested and/or required changes to COUNTY'S WC Claims Administration System. The documents listed below should include, without limitation, a detailed work plan, work breakdown structure, beginning and completion dates of phases, Gantt chart, staffing resources and organization. The Implementation Packages submitted pursuant to this SOW, shall automatically become a part of the Contract immediately upon COUNTY'S approval following their delivery. Implementation Packages are subject to final approval by COUNTY and may be requested at the sole discretion of COUNTY. Implementation Packages will include at minimum:

- a. Hardware and Communications Requirements Document
- b. Requirements Package
- c. Requirements Document
- d. UniVerse Descriptors
- e. ASP Connection Documentation
- f. Training Materials (electronic)
- g. Final Implementation Procedures

- 3.13 Maintenance Schedule  
Maintenance Schedule shall mean the time allotted for CONTRACTOR to run daily, normal, routine maintenance, as approved by COUNTY.
- 3.14 Phase(s)  
Phase(s) shall mean the organization of work to be executed and delivered in the Implementation Package as defined in Subparagraph 3.12, above.
- 3.15 Software License  
Authorized use of CONTRACTOR'S Software as listed in Subparagraph 3.10, above, the payment for which is included in the Basic Monthly Maintenance and Support fee.
- 3.16 Source Code  
Source Code shall mean:
- 3.16.1 one printed copy of a listing of the source language code (human-readable and maintainable program instructions) for the System;
  - 3.16.2 one copy on magnetic medium of the source language code for the System;
  - 3.16.3 one copy on magnetic medium of all control files, CONTRACTOR provided tables and job control language;
  - 3.16.4 all documentation provided by CONTRACTOR; and
  - 3.16.5 all maintenance tools (test programs and program specifications), descriptions of proprietary or third-party system utilities (including compilers, library packages, linkers or assemblers), with instructions for compiling and linking the source code into executable forms, a description of the system/program generation procedure, and a list, including detailed descriptions and names and addresses, of the owners of software, firmware, licenses or other third-party proprietary interests necessary or desirable to enable COUNTY to use or support the System.
- 3.17 Specifications  
Specifications as used herein shall mean the functional and operational requirements/features as set forth in this SOW and Attachment I.
- 3.18 System  
System shall mean all Software, Hardware, third party software, customizations, conversion, interfaces, databases and services described in this Contract and as otherwise agreed to in writing by CONTRACTOR and COUNTY pursuant to Subsection 8.4 (Change Notices and Amendments), of the Contract, collectively comprising the Workers' Compensation Claims Administration System. Reference to the System may include one or more components or modules thereof or the entire System.
- 3.19 Third Party Administrators  
Third Party Administrators shall mean the identified, contracted organizations that handle workers' compensation claims administration for COUNTY.

**3.20 Third Party Software**

Third Party Software shall mean application software owned by third parties which COUNTY may or may not have a license to use, but is necessary to run COUNTY'S WC Claims Administration System. If COUNTY does not have a license to use the necessary third party software, CONTRACTOR shall purchase a license for use at no additional charge to COUNTY. Third party software shall include but is not limited to:

- ◆ Citrix Software – Software used for application publishing and for providing a secure gateway for client access to GenSource applications.
- ◆ Microsoft Software – Operation system and various other software used throughout the ASP environment.
- ◆ AIX – Operating system for the database server.
- ◆ SQL Server 2005 – Database software used for the Data Warehouse.
- ◆ WIntegrate – Report generator.
- ◆ English Wizard – Query and reporting tool used to ask "English" questions to query against the database.
- ◆ UniVerse – Database software.

**3.21 User**

User shall mean any person or entity authorized by COUNTY to access or use the WC Claims Administration System or a System Component.

**3.22 Work Order(s)**

Work Order(s) shall mean a fully executed project ordering document for customizations to be provided by CONTRACTOR upon COUNTY'S request and approval in accordance with the Contract. Each Work Order executed under the Contract shall adhere to the format described in Exhibit A, Attachment II.

**4.0 RESPONSIBILITIES**

COUNTY'S and CONTRACTOR'S responsibilities are as follows:

**4.1 COUNTY'S RESPONSIBILITIES**

COUNTY will administer the Contract according to Section 6.0 (Administration of Contract – COUNTY) of the Contract. Specific duties will include:

- 4.1.1 Monitor CONTRACTOR'S performance in the daily operation of the Contract.
- 4.1.2 Provide direction to CONTRACTOR in areas relating to policy, information and procedural requirements.
- 4.1.3 Prepare Change Notices in accordance with Subsection 8.4 (Change Notices and Amendments), of the Contract.
- 4.1.4 Approval and Disapproval of Work  
COUNTY shall have the right to approve or disapprove of any work, task, deliverable, work order, goods, services and other work provided by CONTRACTOR.

In the event COUNTY disapproves of any work, task, deliverable, work order, goods, services and other work provided by CONTRACTOR, CONTRACTOR shall have ten (10) days from CONTRACTOR'S receipt of written notice of disapproval to correct, modify, supplement or otherwise remedy such disapproved matter and resubmit it to COUNTY for approval. In the event of a subsequent disapproval, COUNTY may request subsequent resubmissions, enter into the Dispute Resolution Process, or declare the Contract in breach.

Unless expressly provided otherwise, any and all approval or acceptance by COUNTY under the Contract may be given, withheld, or denied in COUNTY'S sole and absolute discretion.

#### **4.2 CONTRACTOR'S RESPONSIBILITIES**

- 4.2.1 CONTRACTOR shall designate a Project Manager who shall be a full-time employee of CONTRACTOR.
- 4.2.2 The Project Manager shall be the central point of contact for COUNTY and shall act as a liaison for CONTRACTOR in coordinating the performance under the Contract.
- 4.2.3 The Project Manager shall have the authority to act for CONTRACTOR on all matters relating to the daily operation of the Contract. The Project Manager or alternate shall be able to effectively communicate, in English, both orally and in writing.
- 4.2.4 CONTRACTOR'S Project Manager or alternate shall attend meetings as requested by COUNTY.
- 4.2.5 Other CONTRACTOR Personnel
  - 4.2.5.1 CONTRACTOR shall assign a sufficient number of employees to perform the required work under the Contract and to complete all services in a timely manner.
  - 4.2.5.2 All personnel providing services in conjunction with the Contract will be required to sign an Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement, as set forth in Subsection 7.4 of the Contract. During the term of the Contract, CONTRACTOR shall maintain an updated file of the signed forms and shall forward copies of all signed forms to COUNTY'S Project Manager.
  - 4.2.5.3 CONTRACTOR shall, to the maximum extent possible, maintain a constant level of staffing for COUNTY'S Contract. CONTRACTOR shall promptly fill any staff vacancy with employees having qualifications at least equivalent to those of the staff being replaced.

#### 4.2.6 CONTRACTOR Employee Acceptability

- 4.2.6.1 CONTRACTOR shall provide COUNTY with the names of its staff assigned to work on COUNTY'S contract.
- 4.2.6.2 CONTRACTOR shall not subcontract with any personnel for performance of services hereunder unless the provisions in Subsection 8.38 (Subcontracting) of the Contract are met.

#### 4.2.7 Materials and Equipment

CONTRACTOR shall be responsible for the purchase of all hardware, software and all other materials/equipment necessary to provide these Contract services. CONTRACTOR shall use materials that are safe for the environment and safe for use by the employee.

#### 4.2.8 CONTRACTOR'S Office and Hours of Operation

- 4.2.8.1 CONTRACTOR shall maintain an office with a telephone in the company's name where CONTRACTOR conducts business. The office shall be staffed during the hours of 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding holidays observed by CONTRACTOR, by at least one employee who can appropriately respond to the priority level of an issue, any service requests and complaints which may be received about CONTRACTOR'S performance of the Contract. CONTRACTOR will provide COUNTY with a phone number to call when the office is closed.

- 4.2.8.2 Emergency Notifications

CONTRACTOR'S and COUNTY'S Project Managers, or their respective designees, shall be accessible twenty-four (24) hours a day, seven (7) days per week to each other and/or other COUNTY staff for emergency reporting or consultation. CONTRACTOR shall provide an emergency telephone number where CONTRACTOR'S Project Manager, or designee, may be reached on a twenty-four (24) hour per day basis.

### 5.0 SPECIFIC WORK REQUIREMENTS

It is COUNTY'S expectation that CONTRACTOR will complete the tasks described below in a manner which will contribute to and result in completion of the deliverables outlined herein. CONTRACTOR shall be responsible for any penalty incurred due to the failure of CONTRACTOR'S hardware, software, or hosting services as defined in this Statement of Work, providing such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by COUNTY.

#### 5.1 GENIRIS ASP IMPLEMENTATION

Upon Contract execution, CONTRACTOR shall be responsible for 1) initial migration of COUNTY'S WC Administration database from COUNTY'S hosted

server to CONTRACTOR'S hosted server; and 2) converting COUNTY'S WC claims data into a format appropriate for the new GenIRIS ASP; and 3) implementing the GenIRIS ASP for all current Users on the COUNTY'S hosted server. The GenIRIS ASP Implementation shall be deemed completed upon written acceptance and approval by COUNTY. CONTRACTOR shall:

#### 5.1.1 Task #1 – GenIRIS Configuration and Data Migration

##### **Deliverable: Implementation Package**

CONTRACTOR shall deliver to COUNTY an Implementation Package no later than five (5) days after the Effective Date of the Contract. CONTRACTOR and COUNTY shall review and revise all documents provided in the Implementation Package as necessary. CONTRACTOR shall submit the final Implementation Package within twenty (20) days following the Effective Date. All documents provided in the Implementation Package shall be comprehensive in scope and breadth and set forth in detail the work plan proposed by CONTRACTOR and COUNTY to install, configure and make operational, directly or through subcontractors, the System. The Implementation Package in whole and in part is subject to final COUNTY approval. Documents to be provided by CONTRACTOR for this specific Task #1 shall be:

- a. Hardware and Communications Requirements Document
- b. Requirements Package
- c. Requirements Document
- d. UniVerse Descriptors
- e. ASP Connection Documentation
- f. Training Materials (electronic)
- g. Final Implementation Procedures

These documents shall fully describe the expectations and requirements of the WC Claims Administration System including, but not limited to:

- a. Software customizations, interfaces, and reports that will be required;
- b. Impacts to current business processes;
- c. Overall approach/strategy for **migrating the data of the WC Claims Administration System** to CONTRACTOR'S hosted server, data conversion, software and performance testing, training, and implementation of the GenIRIS ASP;
- d. Technical architecture
  - Technical schematic and topology of hardware, software and network;
  - Technical specifications of servers;
  - System Performance assumptions (number of concurrent users, volume of transactions and target system response times).

### 5.1.2 Task #2 – Implementation

#### **Deliverable: Final Acceptance**

CONTRACTOR shall perform the following implementation tasks necessary to successfully migrate COUNTY'S WC Administration database from COUNTY'S hosted server to CONTRACTOR'S hosted servers:

- Install and configure the GenIRIS application in CONTRACTOR'S hosted servers based on the Implementation Package;
- Convert all workers' compensation data in accordance with new application specifications, and demonstrate that the data is accessible via the new System without VPN access;
- Provide current disaster recovery plan to clearly demonstrate precautions CONTRACTOR shall take to ensure all data and records are migrated successfully to CONTRACTOR'S hosted server, and to specify the length of time the recovery will require;
- Satisfactorily QA test and demonstrate required System capabilities based on COUNTY's requirements and configuration for all processes and procedures described herein, to ensure System can accept any input and output in order to meet all service requirements.
- Satisfactorily test and demonstrate required online inquiry and report generation capabilities of GenIRIS utilizing COUNTY worker's compensation data;
- Support COUNTY in its User Testing Acceptance by providing technical operations support, as well as reviewing and resolving reported test incidents;
- Support COUNTY planning and execution of a Performance Test by monitoring System performance during test execution, recording performance test results, as well as identifying and implementing hardware, software and database tuning recommendations;
- Provide seven days of training comprised of:
  - 2 days of trainer training for up to 15 students using the new System using non-COUNTY data;
  - 3 days of trainer training for up to 15 students using the new System and COUNTY-specific workers' compensation data; and
  - 2 days of system administration and data mart training utilizing COUNTY'S workers' compensation data.
- Conduct production cutover to include:
  - Converting all data required for COUNTY operations;
  - Performing all configuration required for COUNTY operations; and

- Completing all preparations for COUNTY operations utilizing the System.

Minimum requirements for Final Acceptance include but are not limited to:

- COUNTY'S written verification of converted data for production operations;
- Successful completion of COUNTY'S User Acceptance Test;
- CONTRACTOR'S successful completion of its quality assurance evaluation, including identification and correction of any noted deficiencies;
- Completion of all user training; and
- Completion of production cutover activities.

## **5.2 BASIC MONTHLY MAINTENANCE AND SUPPORT**

CONTRACTOR shall maintain all Software and Hardware necessary to successfully operate the System, including third party software, in reliable and fully operational condition.

Basic Monthly Maintenance and Support shall include but is not limited to: maintenance and support, Software updates, data processing support and maintenance, hosting services, and FROI/SROI-EDI support.

Upon receiving notification by COUNTY of any deficiency or repair found in any of the tasks listed in this Subparagraph 5.2, CONTRACTOR shall take Corrective Actions, as prescribed in the Service Level Agreement, Attachment II of this SOW.

CONTRACTOR shall provide the following:

### **5.2.1. Task #3 – Maintenance and Support Services**

**Deliverable: Services performed as prescribed in the Service Level Agreement**

Maintenance and support services shall include but are not limited to any repair or maintenance required to the existing Software, Software licenses, and/or Hardware provided by the CONTRACTOR, and to third party software. Services shall also include assistance for inquiries and troubleshooting related to the CONTRACTOR'S Software and/or Hardware and third party software. CONTRACTOR shall:

- Assist Users with any technical issues;
- Perform routine system maintenance as defined in Paragraph 6.0, Maintenance Schedule;
- Increase Software Licenses upon written request from COUNTY;
- Diligently monitor CONTRACTOR'S Software, Hardware and third party software;

- Correct, issue and/or install Software and/or Hardware, such as security patches, whether or not defects have been reported to CONTRACTOR by COUNTY;
- Provide all technical personnel, equipment and tools sufficient to perform timely, effective repairs;
- Diagnose the reported problem and advise COUNTY of the estimated time to repair;
- Repair the reported problem, provide a procedure to work around the problem, or substantiate the determination that no repair is necessary;
- Test all repairs to ensure that the repair was successful and that the operation is defect-free;
- Coordinate all technical support services with COUNTY;
- Fully document any and all repair work provided to COUNTY; and
- Respond to any questions.

5.2.1.1 Software Licenses

Additional Software Licenses requested by COUNTY shall be billed separately and in accordance with Subsection 5.6 (Invoices and Payments) of the Contract.

5.2.1.2 Software Updates

Provided that the Contract is still in effect at the end of the second anniversary of the Contract date, and every two years thereafter, CONTRACTOR will make an Upgrade to the Software available to COUNTY. "Upgrade" means a routinely-issued revision of the Software, generally issued for the purpose of correcting discovered errors, improving efficiency or overall performance and incorporating enhancements or statutory changes that CONTRACTOR makes generally available to its customers of the Software but does not include customizations that include departures from the standard specifications with regard to functionality or enhancements or added features or functions. There shall be no installation charge for any Upgrade which can be installed remotely without customization. COUNTY will cooperate as necessary to allow installation of any Upgrade and understands that its failure to do so may, in CONTRACTOR'S sole discretion, relieve CONTRACTOR of any subsequent obligation under this provision. All Upgrades shall be delivered to COUNTY electronically via CONTRACTOR'S host server.

5.2.1.3 Date Processing Support and Maintenance

CONTRACTOR shall provide biennial Upgrades and identify all date processing routines that will be affected by data entered for the current Fiscal Year (FY). CONTRACTOR shall determine the required changes to each date processing routine to ensure the current FY will be correctly processed.

For date processing routines that require changes, CONTRACTOR shall:

- Identify all date processing routines and the changes required to handle current FY data input or output. This shall include data acceptance and internal calculations of dates up to and beyond the current FY.
- Submit a list of routines to be corrected to COUNTY;
- Make corrections to program code and test;
- Provide COUNTY with documentation of processing changes and data entry requirements for entering the current FY in date formats;
- Assist COUNTY as required in testing the date entry of the current FY;
- Upon successful completion of COUNTY'S testing of data routines, install the defect-free replacement of relevant application code on the COUNTY data server.

#### 5.2.1.4 Hosting Services

Hosting Services shall be CONTRACTOR'S responsibility to provide a secure and efficient environment to house COUNTY'S WC Administration application and database. CONTRACTOR shall:

- Provide dedicated database server(s) for COUNTY use only, not shared with other CONTRACTOR clients; and
- Provide adequate data storage to accommodate COUNTY'S current and future needs.

The Service Level Agreement requirements are listed in Attachment I of the SOW.

### 5.3 FROI/SROI – EDI EXPORT FORMAT SERVICES

CONTRACTOR shall provide the functionality to allow COUNTY to:

- Provide claims data in readable formats to supply to the agreed upon EDI Exporter responsible for exporting data to the State;
- Provide the functionality to ensure that all claims that have been acknowledged by the State are documented as such, whether approved or denied; and
- Provide the functionality to allow COUNTY to furnish reports to TPAs listing claims that require correction as directed by the State.

#### 5.3.1 **Task #4: FROI/SROI – EDI Export Format Services**

##### **Deliverable: Compliant FROI/SROI Reporting**

The acceptance criteria for the Task #4 Deliverable - Compliant FROI/SROI Reporting, shall provide the functionality to allow COUNTY to:

- Report successfully and timely to the State within the mandated deadlines, namely provision of correctly formatted claims data ready for export with the frequency established by COUNTY;
- Capture all acknowledgements from State;
- Provide accurate reporting back to TPAs of acknowledgements;

In the event COUNTY determines it is in its best interest to change the agreed upon EDI Exporter, CONTRACTOR shall continue to be responsible for all duties listed in this Subparagraph 5.3.1 and in the Contract in whole.

The Software will provide the means by which COUNTY may run data routines and report data to the EDI Exporter and the State. Under no circumstance shall the CONTRACTOR be responsible for any penalties applied from the State caused by any action or deficiency by COUNTY or the EDI Exporter in running routines or reporting data.

#### **5.4. CUSTOMIZATIONS**

CONTRACTOR shall make customizations during the life of the Contract as requested, approved and accepted by COUNTY. COUNTY shall pay a minimum of two hours at the rates listed in *Exhibit B - Pricing Schedule*, Customization Costs (Hourly Rate), for CONTRACTOR to examine the feasibility of and to develop preliminary specifications for the requested customization. The estimate shall be priced on a time and materials basis and shall be capped at the number of hours agreed upon to execute the customization. The estimate submitted by CONTRACTOR as stated on the Authorization for Billable Services form shall be valid for 60 days from the date submitted. All completed customizations shall be subject to final COUNTY approval and shall automatically become a part of the Contract. Should CONTRACTOR find that a customization to an upgraded and/or updated application is not feasible, CONTRACTOR shall provide its written justification to COUNTY within seven (7) business days upon reaching such finding. CONTRACTOR shall provide the following:

##### **5.4.1 Task #5– General Customizations**

###### **Deliverable: Software Customization**

COUNTY shall submit the RFE form, as provided in *Exhibit L*, to initiate customization requests.

#### **6.0 MAINTENANCE SCHEDULE**

To mitigate delays in System performance, CONTRACTOR shall provide all daily, routine and normal system maintenance between the hours of 10:00 p.m. through 6:00 a.m. Pacific Time, seven (7) days per week. Should CONTRACTOR find that an unexpected irregular maintenance service needs to be performed outside of the Maintenance Schedule, CONTRACTOR shall attempt to provide COUNTY with 48 hours notice of such maintenance. COUNTY and CONTRACTOR may request to change the Maintenance Schedule pursuant to Subsection 8.4 (Change Notices and Amendments) of the Contract, however, COUNTY shall have the right to final acceptance and approval of any such change.

## 7.0 DATA STORAGE

All COUNTY data shall be stored on CONTRACTOR'S equipment at CONTRACTOR'S place of business listed in *Exhibit E – CONTRACTOR'S Administration*. In the event CONTRACTOR should find that COUNTY data in whole or in part must be transferred to another location within the continental U.S., CONTRACTOR must notify COUNTY prior to such transfer. If CONTRACTOR should find that COUNTY data in whole or in part must be transferred to a location outside the continental United States, CONTRACTOR must obtain COUNTY'S approval prior to such transfer. CONTRACTOR will provide such transfer at its own expense, and COUNTY shall not be responsible for any related interruptions or impairments of the Hosting Services, as described herein.

CONTRACTOR shall provide COUNTY with at least 60 days notice of its intent to transfer COUNTY data to any other location. CONTRACTOR shall include the following detailed information at minimum:

- Purpose for transferring the data;
- Address of the new location;
- Transfer timeline;

COUNTY, at its discretion, may require an Implementation Package to be provided for this transfer, as defined in Subparagraph 3.12, of this SOW.

## 8.0 SECURITY

CONTRACTOR shall provide COUNTY with documented proof of the program measures taken to safeguard COUNTY data housed by CONTRACTOR, including the security of the environment in which COUNTY data is imported and exported to and from CONTRACTOR. The proof document must include the architectural design of the security program pursuant to the requirements of the Contract.

## 9.0 OWNERSHIP AND TRANSITION

All computerized claim data and computerized claim files shall be the property of COUNTY and shall be returned to COUNTY or delivered to a new service provider, as designated by COUNTY. It is understood that the information described above is the property of COUNTY and not CONTRACTOR.

Upon expiration or termination of the Contract or in the event that COUNTY elects not to renew the Contract at the end of its term, or otherwise terminates the Contract for default, convenience or insolvency, CONTRACTOR shall fully cooperate with COUNTY to provide for the transition to whatever service replacement method COUNTY determines to be in its best interest.

## 10.0 TRAINING

In the event COUNTY should require training for services not listed in Subparagraph 5.2, herein, CONTRACTOR shall provide training at the rates listed in *Exhibit B – Pricing Schedule*. CONTRACTOR shall recommend training curriculum and provide a qualified instructor, related training materials and a training facility.

**10.1 Instructor's Travel and Lodging Expenses**

Travel and lodging expenses of CONTRACTOR'S instructors providing training under the Contract shall be billed separately. The invoices for such expenses shall be prepared and submitted in accordance with Subsection 5.6 (Invoices and Payments), of the Contract.

**11.0 MINIMUM REQUIREMENTS FOR USERS**

CONTRACTOR shall provide COUNTY with a list of minimum requirements needed for all System Users (including, but not limited to, CAO, County Counsel, client County departments and WC TPAs) to utilize the System. The list of minimum requirements shall include, at minimum, connectivity requirements, hardware equipment and software applications. CONTRACTOR shall contact Users for requirements information, as instructed by COUNTY.

**12.0 REPORT DESIGN**

CONTRACTOR shall continue to provide and/or make available, with the same frequency and distribution, all reports currently being received and/or accessed by COUNTY.

**13.0 QUALITY ASSURANCE PLAN**

COUNTY shall evaluate CONTRACTOR'S performance under the Contract using the quality assurance procedures, as defined in Subsection 8.15 (COUNTY'S Quality Assurance Plan), of the Contract.

**14.0 BUSINESS CONTINUITY PLAN**

CONTRACTOR shall, within thirty (30) days of Contract implementation, provide to COUNTY a written business continuity plan describing a structured and integrated process that ensures uninterrupted provision of critical services related to the Contract following any event which could interrupt these business operations. The plan shall include, but not be limited to, the following:

- CONTRACTOR policies and procedures to assure COUNTY'S continued operation following an event;
- A description of COUNTY critical services and business processes prioritized in their importance;
- Establish viable recovery time frames relative to its impact to COUNTY'S operation;
- Address, computer, telephone, facsimile, key contact and all other critical information concerning alternative business processes and/or location(s) following an event.

CONTRACTOR shall provide COUNTY with annual plan updates, due on the anniversary of the Contract.

This plan is subject to the approval of COUNTY. COUNTY shall not be required to identify deficiencies in CONTRACTOR'S Business Continuity Plan. COUNTY shall neither assume responsibility nor liability for CONTRACTOR'S Business Continuity Plan.

**15.0 PERFORMANCE STANDARDS REQUIREMENTS (PSR) AND SERVICE LEVEL AGREEMENT (SLA)**

The PSRs and the SLAs (SOW, Attachment I) are intended to be completely consistent with the Contract and the SOW, and are not meant in any case to create, extend, revise, or expand any obligation of CONTRACTOR beyond that which is defined in the Contract and the SOW. In any case of apparent inconsistency between services as stated in the Contract, the SOW, the PSR, and the SLAs, the meaning apparent in the Contract and SOW will prevail. If any service seems to be created in the PSR or the SLA which is not clearly and forthrightly set forth in the Contract and the SOW, that apparent service will be null and void and place no requirement on CONTRACTOR.

**PERFORMANCE STANDARDS REQUIREMENTS CHART**

When CONTRACTOR'S performance does not conform to the requirements of the Contract or if CONTRACTOR does not meet or maintain the agreed upon service levels, the COUNTY will have the option to apply the following remedies providing such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by COUNTY:

<b>STANDARD</b>	<b>PENALTY</b>
1. Deliverables for Task #1: Implementation Package	Failure to meet the expectations of any part of this Deliverable may result in a penalty of up to 10% of the Implementation Costs listed in <i>Exhibit B – Pricing Schedule</i> .
2. Deliverables for Task #2: Final Acceptance	Failure to meet the expectations of any part of this Deliverable may result in a penalty of up to 15% of the Implementation Costs listed in <i>Exhibit B – Pricing Schedule</i> .
3. Deliverables for Task #3: Maintenance and Support Services	Failure to meet any part of this Deliverable may result in a penalty of up to 10% for each failed Deliverable but no more than 50% of the Basic Monthly Maintenance and Support Services costs listed in <i>Exhibit B – Pricing Schedule</i> . Penalties shall be determined by COUNTY and may be ongoing until deliverables are completed to COUNTY'S satisfaction.
4. Deliverables for Task #4: Compliant FROI/SROI Reporting	Failure to meet the terms of this Deliverable as a result of CONTRACTOR'S negligence may result in a penalty of up to 15% of the FROI/SROI State Reporting annual costs listed in <i>Exhibit B – Pricing Schedule</i> . Penalties shall be determined by COUNTY and may be ongoing until deliverable is completed to COUNTY satisfaction. Under no circumstance shall the COUNTY be responsible for any penalties applied by the State due to any action or deficiency for which CONTRACTOR or Subcontractor is responsible.

**SERVICE LEVEL AGREEMENT (SLA)**

**I. Maintenance and Support Services**

**A. Technical Support**

1. CONTRACTOR shall provide Help Desk support via phone, facsimile and/or email. The COUNTY has and will continue to have a dedicated support representative along with backup representatives in the event its dedicated representative is unavailable.
2. CONTRACTOR and COUNTY shall jointly prioritize all issues, defects and other errors according to the following schedule.

<b>PRIORITY</b>	<b>DEFINITION</b>
1	A problem causing critical impact to COUNTY'S operation and no acceptable workaround is immediately available. CONTRACTOR shall respond to COUNTY within two hours. After normal business hours, including weekends, CONTRACTOR shall respond to notifications made by COUNTY's Project Manager or his or her designee within two hours of such notification. Work begins as soon as possible after notification and continues until problem is resolved or a workaround is available. If resolution requires a software correction, it is delivered to COUNTY as soon as the correction is available.
2	A problem causing significant (but not critical) impact to COUNTY'S operation and no acceptable workaround is immediately available. Work begins after COUNTY'S priority 1 issues are resolved per definition 1 above, and continues until the problem is resolved or a workaround is available. If resolution requires a software correction, it is delivered to COUNTY as soon as the correction is available.
3	A problem that impairs functionality or performance, but COUNTY can work around it without undue effort. CONTRACTOR will investigate the problem, decide if workaround is acceptable and if resolution requires a software correction. If a software correction is required CONTRACTOR may schedule the correction for a future release and/or provide patch as soon as possible.
4	A request for information or assistance that is not of a serious nature, but that cannot be handled immediately over the phone. A software error or defect exists but does not impede any functionality or performance. CONTRACTOR will suggest a workaround to COUNTY. If a software correction is required CONTRACTOR may schedule the correction for a future release and/or provide a patch as soon as possible.

**B. Hardware Maintenance**

All servers are constantly monitored and updated with the latest patches and releases from each respective vendor. Microsoft security patches are maintained using WSUS (Windows Security Update Server). These patches are downloaded and installed automatically upon authorization of the network administrator. WSUS polls for updates on an hourly basis and alerts the administrator as soon as patches are available. Service Packs are downloaded as soon as they are available. They are installed on test servers, and then on corporate production servers. Once they have been verified for internal production, then they are scheduled for installation on the ASP environment.

1. Upon release of a new version of the operating system or database version, CONTRACTOR will schedule a certifications test. COUNTY will receive regular updates to the application software. As part of the application upgrade, CONTRACTOR will review the operating system and database versions running on the database server. If there is a new version of either that has been certified by CONTRACTOR, it will be installed along with the new version of the application.
2. In addition, as part of the application upgrade, any microcode or firmware updates available for the database server are installed as well. In the event that a maintenance level update for the operating system is determined to be of a critical nature that cannot wait for an application upgrade, it will be scheduled and installed along with any microcode or firmware updates as soon as possible.
3. During each application upgrade, all hardware is reviewed. Any hardware not meeting all functional and security requirements is replaced. The average tenure for servers in the ASP environment is 3 – 5 years.

**C. System Operations**

1. CONTRACTOR ensures system operation service levels as follows:
  - a. 24x7x365 real-time monitoring and alerting of every element of the ASP environment is conducted to track the overall health of systems and proactively address any possible problematic areas.
  - b. Fault-tolerant, redundant and failover systems are in place to ensure high availability, data integrity and that no single points of failure exist for the maximum possible up-time.
  - c. Occasionally the internet service provider that services the GenSource ASP datacenter will perform regularly scheduled maintenance which could affect internet communications to the datacenter. The scheduled maintenance is performed after-hours or on weekends and will be communicated to COUNTY as soon as CONTRACTOR is aware of the planned maintenance which usually ranges from 15 minutes to 1 hour in duration.

**D. Back-up and Discovery Recovery**

1. CONTRACTOR'S back up and recovery services currently in place are:
  - a. Full backups are performed on all production servers nightly. In addition, server images are taken prior to any updates
  - b. Backup tapes are sent to an off-site data storage site each weeknight. The monthly backup set is saved permanently at the site.
  - c. Restore time is dependent on the amount of data needed, the type of restore (software or data) and the date the restore is from. If the required tape is off-site, it can be retrieved in less than 2 hours. The time for a restore could be anywhere from 30 minutes to 4 hours.

**EXHIBIT A**  
**Attachment I**

- d. All servers and communication equipment are connected to an Uninterrupted Power Supply. CONTRACTOR'S current backup site is its Irvine office. CONTRACTOR plans to have its hot-site setup in a hardened data center by Q3 of next year
  - 2. The current data center will be equipped with Halon fire extinguishers. The new hot-site will have an early warning smoke detection system that will automatically drop the temperature, as well as smoke detectors that release dry flame retardant. The current data center is accessible only via key cards, which are held by a limited number of personnel.
- E. Software Licenses
- See item B above for operating system updates.
- Notifications are immediately provided by each respective software vendor upon the release of any new hot fix or service pack. All hot fixes and service packs are installed and tested in a test environment. Upon successful completion of the test, they are scheduled for installation in production.
- As for the claims management applications, a new release will be installed every two years. In the interim, any fixes or enhancements done for the COUNTY or any critical fixes will be installed as soon as they have tested.
- F. Software Updates
- Once a patch has successfully completed CONTRACTOR'S internal quality assurance process, it is installed in a test environment on the COUNTY'S servers. Once CONTRACTOR'S internal QA team has tested it there, the COUNTY will be given the opportunity to test it. Once the COUNTY has given its approval, the changes are moved into the production environment.
- Enhancements are normally included in the new version of the software, released each year. The COUNTY'S maintenance plans provides for the installation of a new release every other year. If an enhancement is deemed critical such that it cannot wait for a next version of the software, it would be installed as described above for software patches.
- New releases are created once a year. Every other year, the new release will be installed on the COUNTY'S servers. A project manager will be assigned to oversee the installation of the new release and a project plan will be provided to the COUNTY for the installation. A requirements session, training and user acceptance testing will all be included in the plan.
- Upon release of any new third party software that integrates with GenIRIS, it is scheduled for compatibility testing. Once tested, the new versions will be installed along with the next application upgrade. If the third party software is shared across the client base, then the new version will be installed for all clients upon the next client upgrade. All clients will be contacted in advance of the change and provided ample time for testing in the test environment.

**GenSource**

***Request for Customization, Billable Services and  
Authorization Procedures***

Updated: 11/08/2006

J.Kubota

This is an overview of the GenSource Client Support procedures for processing Request for Estimates and the Authorization for Billable Services.

**Request for Estimate**

1. Client completes and sends a Request for Estimate (RFE), copy attached, to their GenSource Client Support Representative.
2. Support Rep saves an electronic copy of the RFE in the online Client Support files.
3. Support Rep opens a tracking database case. This database is used for internal work assignments and recording status.
4. Support Rep forwards RFE to upper management for work approval.
5. If approved, support Rep opens a project in a database used for timekeeping and billing purposes.
6. Support Rep sends approval or rejection notice to the client.
7. Support Rep distributes the approved RFE to consulting and the product manager for analysis and design of the project, in order to determine the estimate of work.
8. Support Rep assigns the work in the tracking database to the product manager or consulting.

**AUTHORIZATION FOR BILLABLE SERVICES**

1. Estimator performs the analysis of the project.
2. Estimator gives the estimate to the Support Rep and assigns track back to the Rep for communicating an Authorization of Billable Services to the client.
3. Rep coordinates and collects the estimated hours for completion of the request from all departments.
4. Rep assembles the quote on an Authorization form, copy attached, and emails the quoted Authorization for Billable Services to the client.
  - Rep saves a copy of the Authorization in the online Client Support files.
  - Rep updates the tracking database with the quoted hours and client communication information.
5. The client either:
  - Accepts, signs and returns the Authorization for Billable Services to the Rep, or
  - Rejects the Authorization for Billable Services.
6. If authorization is rejected the project is cancelled in the database and the track is closed.
7. If authorization is accepted, the Rep:
  - Updates the online Client Support files, tracking and project databases;
  - Assigns the work to the product or operations manager; and
  - Distributes the Authorization to appropriate internal department personnel.
8. Monthly hours are invoiced to the client based on actual work completed on the project in the previous month. Invoicing continues through project completion.
9. Upon project completion and internal QA, a service patch is generated and installed on the client's test environment for client testing.
10. The client tests and informs their Rep that the change is approved for production use.
11. The Rep schedules a time for programming to install the program changes into the production accounts.
12. The changes are moved into Live production.



Date: _____		Pages: 1
To: _____	From: _____	
Co: _____	Co: <b>GenSource</b>	
Fax: _____	Fax: _____	

## **REQUEST FOR ESTIMATE**

**GS Product(s) involved:** \_\_\_\_\_

**Description of Request:**

Additional Information Attached? ☐ Yes / ☐ No  
Completion Date? \_\_\_\_\_ (Required)

Desired Project

By signing below, you hereby agree to pay GS for up to 16 hours (2 hours minimum) to examine the feasibility of, and to develop preliminary specifications for the Project outlined above on a time and materials basis capped at the agreed upon number of hours. The 2 hour minimum is due even if you or we determine that the Project is not feasible or is not cost effective. However, GS will only proceed with the Project itself upon execution of a signed Authorization For Billable Services based on an estimated budget and completion date provided by GS.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Company: \_\_\_\_\_ Telephone: \_\_\_\_\_ Date: / /2007

FOR INTERNAL GS USE ONLY

GS Case# \_\_\_\_\_ Trac#: \_\_\_\_\_ Date Acknowledged: / /2007 Date Distributed: / /2007 Sent to: \_\_\_\_\_

**A 2-hour minimum charge applies to each request for an estimate.**



Date: _____		Pages: 1
To: _____	From: _____	
Co: _____	Co: GenSource	
Fax: _____	Fax: (661) 294-1310	

## ***AUTHORIZATION FOR BILLABLE SERVICES***

**GS Product involved:** \_\_\_\_\_  
**Description of Project:** \_\_\_\_\_

**Case#:** \_\_\_\_\_ **Track#:** \_\_\_\_\_ **Project#:** \_\_\_\_\_

Additional Information Attached? ☐ Yes / ☐ No Quote prepared by: \_\_\_\_\_

Estimated Hours: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

Required Deposit: \_\_\_\_\_

AUTHORIZATION. You hereby agree to pay GS to proceed with the Project outlined above on a time and materials basis up to the amount of the budget set forth above (or any increase approved by you). GS will promptly notify you if it believes that this Project will not be completed within the estimated time or budget. You may terminate the Project at any time by written notice to GS, and will be liable only for the costs incurred to that date or reasonably necessary to terminate this Project.

PAYMENT TERMS: GS time on this Project will be billed at the contractual rate. Payment of all bills (generally monthly) not covered by a deposit is due within 30 days after the invoice date. GS may require payment of third party costs before ordering third party materials or services.

OWNERSHIP. In order to reduce customization costs, GS uses good faith efforts to use its existing software to complete this Project. Accordingly, GS must own all rights to all of the results, products and proceeds of this Project. You will have a license to any software incorporated into your system on the same terms as the underlying GS product, and will treat all GS software in accordance with its status as proprietary copyrighted material.

SOFTWARE RISKS. GS will use its professional efforts in this Project, but does not warrant that its software (including as modified in this Project) will meet your requirements or that the operation of its software will be uninterrupted or error-free.

**EXHIBIT A**  
**Attachment II**

**EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN A WRITTEN AGREEMENT SIGNED BY GS, ALL SOFTWARE IS PROVIDED BY GS "AS IS," WITHOUT ADDITIONAL WARRANTY OF ANY KIND, AND EXCEPT AS NOTED HEREIN, GS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.** No oral or written information or advice given by GS or its representatives shall create any warranty with regard to any software or in any way increase the scope of this warranty.

GENERAL. This Authorization is valid for 60 days and constitutes the entire agreement between the parties with respect to the Project and supersedes all prior or contemporaneous understandings, written or oral, and any contrary terms in any related purchase order. This Authorization shall be governed by California laws, without giving effect to choice of law rules and may only be modified in a written document signed by the parties. Any proceeding related to the Project must be brought in courts located in Orange COUNTY, California. The prevailing party in any dispute shall be entitled to its court costs and reasonable attorneys' fees.

In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits.

By signing below, you hereby authorize the above work and indicate your agreement to the terms stated above.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Company: \_\_\_\_\_ Telephone: \_\_\_\_\_ Date: \_\_/\_\_/2007

Request cancelled by: \_\_\_\_\_ Date: \_\_/\_\_/2007

Final COUNTY Acceptance: \_\_\_\_\_ Date: \_\_\_\_\_

## PRICING SCHEDULE

GCFW (GENIRIS-ASP IMPLEMENTATION COSTS)	\$154,000 One Time Cost
<p>GCFW – Workers' Compensation Information Systems Services</p> <p>ASP Installation – 300 Users</p> <p>Installation and Configuration of GCFW</p> <ul style="list-style-type: none"> <li>• Requirements Analysis for Initial Implementation</li> <li>• Set-up of 'CONFIG" (table driven system options)</li> <li>• Set-up of Hosted Hardware, OS, and DBMS configuration</li> <li>• Set-up of Bill Review Interface (BRVI)</li> <li>• Client enhancement and interfaces will be configured in ASP set up</li> <li>• GenRate.net integration</li> </ul> <p>Third Party Products</p> <ul style="list-style-type: none"> <li>• English Wizard Reporting Software</li> <li>• InfoMaker – Report Generator</li> <li>• IBM Database</li> <li>• SQL Server 2005</li> </ul> <p>GenSource Hosted Hardware (Configuration, Migration and Upload)</p> <ul style="list-style-type: none"> <li>• Database Server and Application Server</li> </ul> <p>GCFW Windows Training (5 days)</p> <ul style="list-style-type: none"> <li>• Additional training will be at \$400 inclusive per day.</li> </ul> <p>Data WareHouse Training (2 days)</p>	
BASIC MONTHLY MAINTENANCE AND SUPPORT	\$240,000/ Year
<p>ASP Subscription Fee – GCFW</p> <ul style="list-style-type: none"> <li>• Fees subsidize numerous ongoing costs including Software Licenses, administrative support services, third party maintenance costs, bi-annual upgrades of the database and application software, and computer hardware and overhead costs.</li> <li>• Monthly maintenance fees begin the first of the month after going "live".</li> </ul> <p>Additional Software Licenses</p> <ul style="list-style-type: none"> <li>• Additional users may be added at the costs of \$100 per user per month added to the existing monthly ASP subscription fee.</li> <li>• If exceed 700 user accounts, then an additional charge of \$6.80 per user per month shall be applied for Microsoft SPLA.</li> </ul>	
ELECTRONIC TRANSFER (FROI/SROI STATE REPORTING)	\$103,500/YEAR
<p>Subcontractor: HealthTech</p> <p>EDI Software and GenSource Interface</p> <p>Transaction and Maintenance Fees for all States mandating electronic data submission:</p> <ul style="list-style-type: none"> <li>• EDI to and from the jurisdiction</li> <li>• First Report of Injury and/or Subsequent Reports of Injury (e.g., ANSI 148 &amp; 149)</li> <li>• Acknowledgement (e.g., ANSI 824) and Error Reporting</li> </ul> <p>Annual volume of expected transmissions: &gt;150,000</p> <p>Rate guaranteed not to exceed \$103,500 annually for contract years 1 through 3 unless statutory reporting requirements are changed; for option years 4 and 5, rate will be subject to mutually agreeable inflation adjustments or upon changes in statutory reporting requirements</p>	

USER TRAINING	\$20,000/YEAR
<ul style="list-style-type: none"><li>• Travel Costs shall not exceed the actual cost of transportation by public carrier. Lodging costs shall not exceed \$174.00 per night, unless authorized by COUNTY.</li><li>• CONTRACTOR shall charge no more than \$2000.00 inclusive per day for up to five (5) students per training provided pursuant to Section 12.0 of the Statement of Work.</li></ul>	

CUSTOMIZATION COSTS (HOURLY RATE)										
Service	March 1, 2007 through June 30, 2008		July 1, 2008 through June 30, 2009		July 1, 2009 through June 30, 2010		July 1, 2010 through June 30, 2011		July 1, 2011 through June 30, 2012	
	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift
Application Services										
Consulting	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Training (over the phone)	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Documentation	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Programming Services										
Analysis	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
New Product Installation	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Customization	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Data Recovery Services	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75

**CONTRACTOR'S EEO CERTIFICATION**

GEN SERVICES DIVISION OF STRATACARE INC  
 Contractor Name  
25512 Avenue Stanford Valencia CA 91355  
 Address  
33089 4977  
 Internal Revenue Service Employer Identification Number

**GENERAL CERTIFICATION**

In accordance with Section 4.32.010 of the Code of the COUNTY of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

**CONTRACTOR'S SPECIFIC CERTIFICATIONS**

1. The Contractor has a written policy statement prohibiting discrimination in all phases of employment. Yes ☒ No ☐
2. The Contractor periodically conducts a self analysis or utilization analysis of its work force. Yes ☒ No ☐
3. The Contractor has a system for determining if its employment practices are discriminatory against protected groups. Yes ☒ No ☐
4. Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. Yes ☒ No ☐

GREGORY FISHER PRESIDENT STRATACARE / GEN SERVICES  
 Authorized Official's Printed Name and Title

  
 Authorized Official's Signature

1-30-2007  
 Date

**COUNTY'S ADMINISTRATION**

CONTRACT NO. \_\_\_\_\_

**COUNTY CONTRACT ADMINISTRATOR:**

Name: Delta Uyenoyama  
Title: Assistant Division Chief  
Address: Chief Administrative Office/ Risk Management Branch  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010  
Telephone: (213) 351-5362 Facsimile: (213) 252-0404  
E-Mail Address: duyenoyama@cao.lacounty.gov

**COUNTY PROJECT DIRECTOR:**

Name: Alex Rossi  
Title: Chief Program Specialist  
Address: Chief Administrative Office/ Risk Management Branch  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010  
Telephone: (213) 738-2154 Facsimile: (213) 252-0404  
E-Mail Address: arossi@cao.lacounty.gov

**COUNTY PROJECT MANAGER:**

Name: Carl Yuan  
Title: Program Specialist III  
Address: Chief Administrative Office/Information Technology Service  
500 W. Temple Street, Room 781  
Los Angeles, CA 90012  
Telephone: (213) 974-4297 Facsimile: (213) 613-1001  
E-Mail Address: cyuan@cao.lacounty.gov

**Notices to COUNTY shall be sent to the following:**

Name: Delta Uyenoyama  
Title: Assistant Division Chief  
Address: Chief Administrative Office/ Risk Management Branch  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010  
Telephone: (213) 351-5362 Facsimile: (213) 252-0404  
E-Mail Address: duyenoyama@cao.lacounty.gov

## CONTRACTOR'S ADMINISTRATION

**CONTRACTOR'S NAME:** GenSource, a Division of StrataCare, Inc., a Delaware Corporation

**CONTRACTOR'S PROJECT MANAGER:**

Name: Richard Nguyen  
 Title: Assistant Project Manager  
 Address: 24205 Avenue Stanford  
Valencia, CA 91355  
 Telephone: (661) 294-1300 Facsimile: (661) 294-1310  
 E-Mail Address: rnguyen@gensourcecorp.com

**CONTRACTOR'S AUTHORIZED OFFICIAL(S)**

Name: Gregory Fisher  
 Title: President/ COO  
 Address: 24205 Avenue Stanford  
Valencia, CA 91355  
 Telephone: (661) 294-1300 Facsimile: (661) 294-1310  
 E-Mail Address: gfisher@gensourcecorp.com

Name: Chris Sullivan  
 Title: VP Operations  
 Address: 24205 Avenue Stanford  
Valencia, CA 91355  
 Telephone: (661) 294-1300 Facsimile: (661) 294-1310  
 E-Mail Address: csullivan@gensourcecorp.com

**Notices to Contractor shall be sent to the following:**

Name: Gregory Fisher  
 Title: President/ COO  
 Address: 24205 Avenue Stanford  
Valencia, CA 91355  
 Telephone: (661) 294-1300 Facsimile: (661) 294-1310  
 E-Mail Address: gfisher@gensourcecorp.com

**CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT**

(Note: This certification is to be executed and returned to County with Contractor's executed Contract. Work cannot begin on the Contract until County receives this executed document.)

CONTRACTOR NAME GenSource Division of Stratacare Inc Contract No. \_\_\_\_\_

**GENERAL INFORMATION:**

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

**CONTRACTOR ACKNOWLEDGEMENT:**

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

**CONFIDENTIALITY AGREEMENT:**

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: [Signature]

DATE: 1 / 30 / 2007

PRINTED NAME: CAROLAN FISHER

POSITION: PRESIDENT STRATACARE/GENSOURCE

Title 2 ADMINISTRATION  
Chapter 2.203.010 through 2.203.090  
CONTRACTOR EMPLOYEE JURY SERVICE

**2.203.010 Findings.**

The board of supervisors makes the following findings. The County of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the County of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the County of Los Angeles has determined that it is appropriate to require that the businesses with which the County contracts possess reasonable jury service policies.

**2.203.020 Definitions.**

The following definitions shall be applicable to this chapter:

- A. "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.
- C. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the County but does not include:
  - 1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or
  - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or
  - 3. A purchase made through a state or federal contract; or
  - 4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the County pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section P-3700 or a successor provision; or
  - 5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, section 4.4.0 or a successor provision; or

Title 2 ADMINISTRATION  
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CONTRACTOR EMPLOYEE JURY SERVICE

6. A purchase card pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section P-2810 or a successor provision; or
  7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section A-0300 or a successor provision; or
  8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section PP-1100 or a successor provision.
- D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if the lesser number is a recognized industry standard as determined by the chief administrative officer or the contractor has a long-standing practice that defines a full-time schedule as less than 40 hours per week.

**2.203.030 Applicability.**

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable.

**2.203.040 Contractor Jury Service Policy.**

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

**2.203.050 Other Provisions.**

- A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of County Counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other County departments.
- B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the County that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract.

Title 2 ADMINISTRATION  
Chapter 2.203.010 through 2.203.090  
CONTRACTOR EMPLOYEE JURY SERVICE

**2.203.060 Enforcement and Remedies.**

For a Contractor's violation of any provision of this chapter, the County department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,
2. Pursuant to chapter 2.202, seek the debarment of the contractor.

**2.203.070. Exceptions.**

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
- B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
  1. Has ten or fewer employees during the contract period; and,
  2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
  3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

"Dominant in its field of operation" means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

**2.203.090. Severability.**

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

**ESCROW AGREEMENT**

This Escrow Agreement (this "**Agreement**") dated as of \_\_\_\_\_, 20\_\_ is entered into by and among the GenSource Division ("**GSC**") of StrataCare, Inc., a Delaware corporation, \_\_\_\_\_, ("**Licensee**"), and Wells Fargo Bank, National Association (the "**Escrow Agent**").

A. Licensee has entered into a license agreement (the "**License Agreement**") with GSC for the license of certain computer programs specified on Escrow Agreement **Exhibit A** ("**Licensed Computer Programs**");

B. Licensee desires to have access to the source code for the Licensed Computer Programs under certain specified conditions;

C. GSC has agreed to deliver to the Escrow Agent a copy of source code for each Licensed Computer Program, together with any required key to decrypt such source code, specified on Escrow Agreement **Exhibit A** (individually and collectively, the "**Source Code**"); and

D. The parties hereto have agreed upon and wish to set forth herein the terms and conditions of an escrow agreement with respect to the Source Code to be delivered to and held by the Escrow Agent.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Appointment of Escrow Agent.** GSC and Licensee hereby appoint and designate the Escrow Agent as the escrow agent hereunder to receive, hold, maintain and release the Source Code in accordance with the terms of this Agreement. The Escrow Agent, by signing this Agreement, accepts appointment as escrow agent with respect to the Source Code, and agrees to receive, hold, maintain and release the Source Code in accordance with the terms of this Agreement. The Escrow Agent is not a party to, nor shall the Escrow Agent be concerned with the provisions of said License Agreement. No duties of the Escrow Agent may be implied by any agreement other than this Escrow Agreement.

2. **Deposits of Source Code.** Within 5 business days after the execution of this Agreement, GSC shall deposit with the Escrow Agent a copy of the Source Code. The Source Code shall be held, maintained, and released by the Escrow Agent in accordance with the terms and conditions hereinafter set forth.

3. **Maintenance of Source Code.** The Source Code shall, subject to the terms and conditions of this Agreement, be held in safe custody by the Escrow Agent. Except as expressly provided in this Agreement, Escrow Agent shall not disclose or otherwise make available to any person or entity other than Licensee or GSC or, make any use whatsoever of, any portion of the Source Code without the prior written consent of GSC. The Escrow Agent does not insure that the Source Code will be held in any environment other than a vault, and Escrow Agent shall not be required to take any further precautions to control the humidity, temperature or environment in which the Source Code will be stored.

4. **Release of Source Code.**

4.1. **Request for Release.** If, at any time Licensee is of the opinion that a Release Condition (as defined below) has occurred, Licensee may promptly provide GSC and the Escrow Agent with a properly completed "**Source Code Release Request**" in the form attached hereto as Escrow Agreement **Exhibit B**. Any such request shall contain a detailed statement specifying the basis upon which Licensee has determined that a Release Condition exists. A "**Release Condition**" means any of the following: (i) GSC permits or suffers to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding,

in respect thereof ("**Proceeding**"), and, if any such Proceeding is not commenced by GSC, such Proceeding is consented to or acquiesced in by GSC, or results in the entry of an order for relief or shall remain for sixty (60) days undismissed, (ii) GSC seeks, consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of GSC or all or any substantial part of its properties (an "**Appointment**") or an order for an Appointment is entered, or (iii) GSC ceases to maintain the Licensed Computer Program related to the Source Code requested to be released, or (iv) GSC ceases its business operations.

4.2. **Release If Uncontested.** If GSC does not contest a Source Code Release Request by written notice to Licensee and Escrow Agent delivered within fifteen (15) days after receipt of the Source Code Release Request, then the Escrow Agent shall promptly release and deliver the Source Code (in the cases of releases under clause (iii) of Section 4.1, limited to the Source Code for the Licensed Program(s) specified as no longer being maintained) to Licensee, who shall treat it in accordance with the provisions of the Source Code Release Request.

4.3. **Release If Contested.** If GSC does contest a Source Code Release Request by written notice to Licensee and Escrow Agent delivered within fifteen (15) days after receipt of the Source Code Release Request, then the Escrow Agent shall hold the Source Code until jointly instructed by GSC and Licensee, or until it receives an appropriate order of a court or arbitrator.

5. **Term.** Subject to earlier termination pursuant to Paragraph 6 or Paragraph 8, the Escrow shall continue until the Source Code is released. GSC may request in writing to Escrow Agent and Licensee that the Source Code be released to it at any time when Licensee ceases to be a customer of GSC and no Release Condition is then in effect. If Licensee does not contest such a request by GSC by written notice to GSC and Escrow Agent delivered within fifteen (15) days after receipt of the GSC request, then the Escrow Agent shall promptly release and deliver the Source Code to GSC; otherwise the Escrow Agent shall hold the Source Code until jointly instructed by GSC and Licensee, or until it receives an appropriate order of a court or arbitrator.

6. **Fees and Expenses.** The Escrow Agent shall be entitled to escrow fees and reasonable expenses in connection with the administration of this Agreement, all of which shall be paid by GSC on behalf of Licensee; provided, however, that the aggregate amount of such escrow fees and expenses paid by Licensee shall not exceed \$2,500 in any calendar year (subject to increases based on cumulative increases in CPI and changes on any replacement of the Escrow Agent). If Licensee shall fail to pay any fee due hereunder within thirty (30) days after written notice of such failure (with a copy to the Escrow Agent), then this Agreement shall be terminated pursuant to Paragraph 5.

7. **Escrow Agent.** To induce the Escrow Agent to accept its appointment and act hereunder, GSC and Licensee agree that:

7.1. **Depository.** The Escrow Agent shall act hereunder as depository only, and shall not be concerned with the substance or contents of the Source Code.

7.2. **Documentation.** The Escrow Agent may act upon any written notice, request, waiver, consent, receipt or other instrument, document or other writing ("**Documents**") furnished to it which it believes to be genuine, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained. The Escrow Agent shall not be liable in connection with the performance by it of its duties pursuant to the provisions of any Document, which it believes to be genuine, except for its own gross negligence or willful misconduct.

7.3. **Liability.** The Escrow Agent shall not be liable for any act done or omitted by it, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, provided such act or omission is done without gross negligence or willful misconduct. In no event shall the Escrow Agent be liable to GSC or Licensee for any damage to or loss of the Source Code due to any causes

which are beyond the control of the Escrow Agent and not the result of its gross negligence or willful misconduct.

7.4. **Duties.** The Escrow Agent shall have no duties except those which are expressly set forth herein, which are purely ministerial in nature, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received in writing and signed by GSC and Licensee, and if its duties herein are affected, unless it shall have given its prior written consent thereto.

7.5. **Indemnification.** GSC and Licensee shall jointly and severally indemnify and hold the Escrow Agent, its employees, officers, agents, successors and assigns harmless from and against any and all losses, costs, damages or expenses (including reasonable attorneys' fees) ("**Losses**") it or they may sustain by reason of the Escrow Agent's service as escrow agent under this Agreement, except such any Losses incurred as a result of Escrow Agent's gross negligence or willful misconduct. The provisions of this section shall survive the termination of this Agreement and the resignation or removal of the Escrow Agent.

7.6. **Advice of Counsel.** The Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in accordance with such advice that is not the result of Escrow Agent's gross negligence or willful misconduct. Such counsel shall be selected by the Escrow Agent in the sole discretion of the Escrow Agent, and the fees and expenses of such counsel shall constitute reasonable expenses in connection with the administration of this Agreement for purposes of Paragraph 6 of this Agreement.

7.7. **Disputes.** Except to the extent otherwise provided herein, if there is any disagreement between GSC and Licensee resulting in adverse claims or demands being made in connection with the Source Code, or if the Escrow Agent in good faith is in doubt as to what action the Escrow Agent should take hereunder, then the Escrow Agent shall hold the Source Code until the Escrow Agent shall have received (i) a determination of a court of competent authority or a certified copy of an award of an arbitrator under an arrangement providing for no further appeal directing delivery of the Source Code, or (ii) a written agreement executed by GSC and Licensee directing delivery of the Source Code in which event the Escrow Agent shall deliver the Source Code in accordance with such order or agreement. The Escrow Agent, at its option, shall be entitled to seek and, if obtained, rely conclusively upon an opinion of counsel to the effect that any court order delivered to Escrow Agent is sufficient to require delivery of the Source Code hereunder. The Escrow Agent shall be entitled to act on such court order and/or legal opinion without further question.

7.8. **Limitation on Liability.** In no event shall the Escrow Agent be liable, directly or indirectly, for any (i) damages or expenses arising out of the services provided hereunder, other than damages which result from the Escrow Agent's gross negligence or willful misconduct, or (ii) special or consequential damages, even if the Escrow Agent has been advised of the possibility of such damages.

8. **Resignation or Termination.** The Escrow Agent may resign as escrow agent by giving each of Licensee and GSC not less than ninety (90) days' written notice of the effective date of such resignation (the "**Resignation Date**"). Upon receiving such notice of resignation, Licensee and GSC shall promptly appoint a successor escrow agent that is mutually acceptable to both parties. By mutual agreement, GSC and Licensee shall have the right at any time upon not less than ten (10) days' written notice to the Escrow Agent to terminate their appointment of the Escrow Agent as escrow agent hereunder, which notice shall specify the effective date of such termination (the "**Termination Date**"). The Escrow Agent shall continue to act as escrow agent under this Agreement until the Resignation Date or Termination Date, as the case may be. Licensee and GSC shall use their reasonable efforts to appoint a successor escrow agent to fulfill the duties of the Escrow Agent hereunder for the remaining term of this Agreement in the event of the Escrow Agent's resignation or termination. Upon the acceptance by the successor escrow agent of its appointment in a writing signed by each of GSC, Licensee and the successor escrow agent, the successor escrow agent shall thereupon become the Escrow Agent hereunder effective on the Termination Date or the Resignation Date. On the Resignation Date or the Termination Date, the resigning Escrow Agent shall deliver the Source Code

to the successor escrow agent. If on or prior to the Resignation Date, the resigning Escrow Agent has not received written instructions from Licensee and GSC of a successor escrow agent, it may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief.

9. **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if done so in writing and sent by certified mail, postage prepaid; if to Licensee, addressed to it at \_\_\_\_\_ Attn. \_\_\_\_\_, if to GSC, addressed to it at 25572 Avenue Stanford, Valencia, California 91355; and if to the Escrow Agent, addressed to it at Wells Fargo Bank, National Association, 707 Wilshire Boulevard, 17<sup>th</sup> Floor, Los Angeles, CA 90017, Attn. Corporate Trust Services; or in any case to such other address as shall be furnished in writing by such party. Such notices or other communications so given shall be deemed to have been given on the date so mailed.

#### 10. **Miscellaneous.**

10.1. **Governing Law.** This Agreement shall be construed and governed in accordance with the internal laws of the State of California without regard to conflicts of laws principles.

10.2. **Complete Agreement.** This Agreement and any documents referred to herein or executed contemporaneously herewith constitute the parties' entire agreement with respect to the subject matter hereof and supersede all prior written and oral agreements, representations, warranties, statements, promises and understandings, and all contemporaneous oral agreements, representations, warranties, statements, promises and understandings, with respect to the subject matter hereof.

10.3. **Amendments and Waivers.** This Agreement may be amended, modified or supplemented, and compliance with any provision of this Agreement may be waived, only by a writing signed by each of GSC, Licensee and the Escrow Agent.

10.4. **Assignment.** This Agreement shall be binding upon and inure to the benefit of GSC, Licensee, the Escrow Agent and their respective successors-in-interest and permitted assigns. Except as expressly provided in this Agreement, none of the parties may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

10.5. **Waivers.** With regard to any power, remedy or right provided herein or otherwise available to any party hereunder (i) no waiver or extension of time will be effective unless expressly contained in a writing signed by the waiving party; and (ii) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

10.6. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.7. **Counterparts; Deliveries.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

10.8 **Authorized Signatures.** The Company and Licensee shall execute Escrow Agreement Exhibits C-1 and C-2 to this Agreement, respectively.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed as of the date first above written.

The GenSource Division of StrataCare, Inc., a  
Delaware corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

[Name of Licensee]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Wells Fargo Bank, National Association,  
as Escrow Agent

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**ESCROW AGREEMENT EXHIBIT A**

**LICENSED COMPUTER PROGRAMS**

<b>LICENSED COMPUTER PROGRAM</b>	

**ESCROW AGREEMENT EXHIBIT B****FORM OF SOURCE CODE RELEASE REQUEST****[Insert Date]**

The undersigned, as an officer of \_\_\_\_\_ ("Licensee"), hereby certifies that:

1. Licensee holds a license to certain Licensed Computer Programs of the GenSource Division of StrataCare, Inc. ("GSC") pursuant to the terms of a License Agreement dated as of \_\_\_\_\_, 200\_ (the "License Agreement") between Licensee and GSC.

2. Certain Source Code for the Licensed Computer Programs was deposited by GSC with Wells Fargo Bank, National Association, as escrow agent (the "Escrow Agent") pursuant to an Escrow Agreement dated \_\_\_\_\_, 200\_ ("Escrow Agreement") among GSC, Licensee and Escrow Agent. Capitalized terms used herein without definition shall have the meanings set forth in the Escrow Agreement.

3. The Release Conditions for the release of the Source Code under the Escrow Agreement have been met in that:

3.1 [ Describe applicable Release Condition(s) ]

3.2 [In the case of a Release Condition described in Paragraph 4.1(iii) of the Escrow Agreement, describe Source Code to be released.]

4. **Retention of Copyright.** Licensee agrees that it will treat the Source Code in strictest confidence and will only use a single copy of the Source Code for the purpose of maintaining the Licensed Computer Programs for use in accordance with the License Agreement. Except as expressly permitted by this Source Code Release Request, the Escrow Agreement or the License Agreement, Licensee will not directly or indirectly (i) sell, transfer, reproduce, publish, use, disseminate or otherwise disclose any portion of the Source Code or (ii) duplicate, manufacture, reproduce or arrange for or contract with any third party to duplicate, manufacture, reproduce any portion of the Source Code. Licensee shall not allow access to the Source Code under any circumstances to anyone other than Licensee's personnel or third party service providers whose access is strictly necessary for the purposes of maintaining the Licensed Computer Programs and who have executed written agreements to abide by the terms of this paragraph.

5. **Need for Protections.** Licensee acknowledges that (a) the Licensed Computer Programs and the Source Code are the exclusive property of GSC and are protected by intellectual property rights; (b) the Licensed Computer Programs and the Source Code are a commercially valuable, proprietary product of GSC; (c) GSC has invested substantial time and economic resources in the design and development of the Licensed Computer Programs and the Source Code, and (d) the Licensed Computer Programs and the Source Code constitute valuable trade secrets of GSC. Breach by Licensee of any agreement contained in this Source Code Release Request can be expected to result in substantial harm to GSC. Although Licensee will be responsible for any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of Licensee's breach of Paragraph 4 above, money damages would not be a sufficient remedy for any breach of those provisions. GSC shall be entitled to specific performance and injunctive relief as remedies for any such breach, without the necessity of posting any bond.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**ESCROW AGREEMENT EXHIBIT C-1****CERTIFICATE AS TO AUTHORIZED SIGNATURES****Account Name: TBD****Account Number: TBD**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as Authorized Representatives of Company and are authorized to initiate and approve transactions of all types for the above-mentioned account on behalf of Company.

<b>Name / Title</b>	<b>Specimen Signature</b>
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	

**ESCROW AGREEMENT EXHIBIT C-2****CERTIFICATE AS TO AUTHORIZED SIGNATURES****Account Name: TBD****Account Number: TBD**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as Authorized Representatives of Licensee and are authorized to initiate and approve transactions of all types for the above-mentioned account on behalf of Licensee.

<b>Name / Title</b>	<b>Specimen Signature</b>
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	

## **SAFELY SURRENDERED BABY LAW**

Posters and Fact Sheets are available in English and Spanish for printing purposes at the following website:

[www.babysafela.org](http://www.babysafela.org)

# *Safely* Surrendered *Baby Law*



*Babies can be safely surrendered  
to staff at any hospital or fire station in Los Angeles County*

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafela.org](http://www.babysafela.org)



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# Safely Surrendered Baby Law



Babies can  
be safely  
surrendered  
to staff at any  
hospital or fire  
station in  
Los Angeles  
County

## What is the Safely Surrendered Baby Law?

Call the Baby Safe Line  
Baby Safe Line number  
1-877-222-9723  
24 hours a day, 7 days a week  
to report the parent's intent to  
surrender a newborn baby  
confidentially.  
The baby must be brought to  
a hospital or fire station in  
Los Angeles County  
within 72 hours of birth.  
The parent or surrendering adult  
will receive a medical questionnaire  
to complete and mail back to  
the hospital or fire station.

*Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a baby, let her know there are other options. For three days (72 hours) after birth, a baby can be surrendered to staff at any hospital or fire station in Los Angeles County.*

## How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

## What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

## Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

## Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

## Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a business reply envelope and can be sent in at a later time.

## What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

## What happens to the parent or surrendering adult?

Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

## Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

## A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the number placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.

*AGREEMENT*

**CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE"  
UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF  
1996 (HIPAA)**

Under this Agreement, Contractor ("Business Associate") provides services ("Services") to County ("Covered Entity") and Business Associate receives, has access to, or creates Protected Health Information in order to provide those Services. Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("the Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations Parts 160 and 164 ("together, the "Privacy and Security Regulations").

The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Therefore, the parties agree as follows:

## **1.0 DEFINITIONS**

- 1.1 "Disclose" and "Disclosure" means, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.
- 1.2 "Electronic Media" has the same meaning as the term "electronic media" in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
- 1.3 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.4 "Individual" means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

- 1.5 "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 164.503, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information, whether oral or recorded in any form or medium, that (i) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Health Information.
- 1.6 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.7 "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.
- 1.8 "Services" has the same meaning as in the body of this Agreement.
- 1.9 "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.
- 1.10 Terms used, but not otherwise defined, in this Paragraph shall have the same meaning as those terms in the HIPAA Regulations.

## **2.0 OBLIGATIONS OF BUSINESS ASSOCIATE**

- 2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:
- (a) shall Use and Disclose Protected Health Information as necessary to perform the Services, and as provided in Sub-sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 of this Agreement;
  - (b) shall Disclose Protected Health Information to Covered Entity upon request;

(c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

(i) Use Protected Health Information; and

(ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose.

2.2 Adequate Safeguards for Protected Health Information. Business Associate:

(a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Paragraph. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the minimum necessary in accordance with the Privacy Regulation's minimum necessary standard.

(b) effective as of April 20, 2005, specifically as to Electronic Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information.

2.3 Reporting Non-Permitted Use or Disclosure and Security Incidents. Business Associate shall report to Covered Entity each Non-Permitted Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors, but is not specifically permitted by this Agreement, and effective as of April 20, 2005, shall report to Covered Entity each Security Incident of which Business Associate becomes aware. The initial report shall be made by telephone call to the Covered Entity's HIPAA Privacy Officer within forty-eight (48) hours from the time the Business Associate becomes aware of the Non-Permitted Use or Disclosure or Security Incident, followed by a full written report no later than ten (10) business days from the date the Business Associate becomes aware of the non-permitted Use or Disclosure or Security Incident to the Chief Privacy Officer at:

Chief HIPAA Privacy Officer, County of Los Angeles  
Kenneth Hahn Hall of Administration  
500 West Temple St.  
Suite 410  
Los Angeles, CA 90012  
(213) 974-2164

2.4 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Paragraph.

2.5. Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered

Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

- 2.6 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity.
- 2.7 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.
- 2.8 Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. However, Business Associate is not required to provide an accounting of Disclosures that are necessary to perform its Services if such Disclosures are for either payment or health care operations purposes, or both. Additionally, such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures that were made prior to the compliance date of the Privacy Rule, April 14, 2003) and shall be provided for as long as Business Associate maintains the Protected Health Information.

Any accounting provided by Business Associate under this Section 2.8 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Sub-section 2.8, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Sub-section 2.8 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

### 3.0 OBLIGATION OF COVERED ENTITY

- 3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that

would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

#### 4.0 TERM AND TERMINATION

4.1 Term. The term of this Paragraph shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (a) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
- (b) Immediately terminate this Agreement if Business Associate has breached a material term of this Paragraph and cure is not possible; or
- (c) If neither termination or cure are feasible, Covered Entity shall report the violation to the Secretary of the federal Department of Health and Human Services.

#### 4.3 Disposition of Protected Health Information Upon Termination or Expiration

- (a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make it infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

#### 5.0 MISCELLANEOUS

5.1 No Third Party Beneficiaries. Nothing in this Paragraph shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

- 5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.
- 5.3 Relationship to Agreement Provisions. In the event that a provision of this Paragraph is contrary to any other provision of this Agreement, the provision of this Paragraph shall control. Otherwise, this Paragraph shall be construed under, and in accordance, with the terms of the Agreement.
- 5.4 Regulatory References. A reference in this Paragraph to a section in the Privacy or Security Regulations means the section as in effect or as amended.
- 5.5 Interpretation. Any ambiguity in this Paragraph shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.
- 5.6 Amendment. The parties agree to take such action as is necessary to amend this Paragraph from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations.

Effective: 4/30/05